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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 22, 2005
1:34 P.M.

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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 22, 2005

1:34 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

DAVID E. WILSON, Chief Executive Officer
Conservation and Liquidation Office
Department of Insurance
Insurance Commissioner Appointee

JOHN GARAMENDI, Insurance Commissioner
State of California

RICK BAUM, Chief Deputy
Department of Insurance

DANA S. APPLING, Director
Office of the Ratepayer Advocates
California Public Utilities Commission

SENATOR DEBORAH ORTIZ

1 KRIS ROSA
Silicon Valley Leadership Group
2
LENNY GOLDBERG
3 TURN
4
JOSE PEREZ, Publisher
5 Latino Journal
Spanish Language Academy
6
LAURENCE CHASET
7 Commissioner Dian Grueneich
Public Utilities Commission
8
9 GRETA J. WALLACE, Director
Child Support Services
10
ASSEMBLY MEMBER KAREN BASS
11
DAVID OPPENHEIM, Executive Director
12 Child Support Directors Association
13
PHILIP BROWNING, President
14 Child Support Directors Association
15 SCOTT J. DREXEL, Chief Trial Counsel
California State Bar
16 California State Bar Appointee
17
18
19
20
21
22
23
24
25
26
27
28

INDEX

Page

Proceedings 1

Insurance Commissioner's Appointee:

DAVID E. WILSON, Chief Executive Officer
Conservation and Liquidation Office
Department of Insurance 1

Introduction and Support by
INSURANCE COMMISSIONER JOHN GARAMENDI 1

Opening Statement of Goals and Responsibilities 2

Questions by CHAIRMAN PERATA re:

Seven CEOs in Seven Years 4

Audit 4

Motion to Confirm 4

Committee Action 5

Governor's Appointees:

DANA S. APPLING, Director
Office of Ratepayer Advocates
California Public Utilities Commission 5

Introduction and Support by
SENATOR DEBORAH ORTIZ 5

Opening Statement of Goals and Responsibilities 6

Questions by SENATOR BATTIN re:

View of Role regarding Electricity
Prices to Residents in Coachella Valley 8

Position of ORA in Future 9

Motion to Confirm 10

Questions by CHAIRMAN PERATA re:

Role in Setting Rates and Quality of Service regarding Cell Phones 10

Witnesses in Support:

KRIS ROSA
Silicon Valley Leadership Group 11

LENNY GOLDBERG
TURN 12

JOSE PEREZ, Publisher
Latino Journal
Spanish Language Academy 12

LARRY CHASET
Commissioner Dian Grueneich 13

Committee Action 14

GRETA J. WALLACE, Director
Department of Child Support Services 14

Introduction and Support by
ASSEMBLY MEMBER KAREN BASS 14

Opening Statements of Goals and Objectives 16

Questions by SENATOR BOWEN re:

State Is 49th out of 52 States in Collections 17

Example of Best Management Practices 18

Dealing with Federal Penalties 19

Handling Transitional Problems after Implementation of Statewide Automated System 20

Conversion Rate 21

Questions by SENATOR CEDILLO re:

Legislative Changes that Might Improve Program 21

Advice to DMV 23

Questions by CHAIRMAN PERATA re:

Review of 10 Percent vs. 90 Percent in Federal Penalties 25

Witnesses in Support:

DAVID OPPENHEIM, Executive Director
Child Support Directors Association 26

PHILIP BROWNING, President
Child Support Directors Association 27

Motion to Confirm 28

Committee Action 29

California State Bar Appointee:

SCOTT J. DREXEL, Chief Trial Counsel
California State Bar 29

Opening State of Goals and Responsibilities 29

Questions by SENATOR BOWEN re:

Backlog of Cases 31

Number of Cases Resolved without Hearings 32

Effect of Triage System on Case Backlog 33

Questions by CHAIRMAN PERATA re:

Diversionary Program for Substance Abuse 35

Percentage of Disciplinary Cases Involving Substance Abuse 36

Motion to Confirm 36

Committee Action 37

Termination of Proceedings 37

Certificate of Reporter 38

APPENDIX: Written Responses to Committee Questions By Appointees, as well as Written Statements by Appointees Not Required to Appear: SANDRA BERG, HENRY GONG,JR., LYDIA H. KENNARD, RONALD O. LOVERIDGE,Ph.D., and PATRICIA SALAS PINEDA, Members, Air Resources Board; REX S. HIME, Board of Directors, California State Fair; MARIAN BERGESON, JAMES C. GHIELMETTI, and JOSEPH TAVAGLIONE, Members, California Transportation Commission 39

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We're going to ask the Insurance Commissioner to please come forward.

COMMISSIONER GARAMENDI: Mr. Chairman and Members of the Committee, I want to introduce to you David Wilson, who I have appointed and I would hope you would confirm to become the Chief Executive Officer of the Conservation and Liquidation Office.

This office is responsible for handling all of the bankrupt insurance companies, some 28 companies now.

David has an extensive background in insurance, beginning with his time as an auditor at Ernst and Young. He did that for some 16 years in the northwest. And then in the last years since that time, beginning in 1993?

MR. WILSON: 1991.

COMMISSIONER GARAMENDI: Beginning in 1991, has worked out of the State of Colorado, where he also was responsible for handling conservations for the Colorado Department of Insurance. Most recently he headed up an insurance company that was in deep trouble and has turned that company around.

I've asked him to take this job because of the special skills that he has in accounting, in management control systems. We need to build that into this office so that going forward, potential problems that have not yet arisen but could because of inadequate management control systems and accounting control systems.

So, given that expertise that he has, we brought him in as a result of a nationwide search conducted by a search firm, Hodge, Nieder and Carrion, and he was found to be one of the best candidates available in the nation. We've now brought him on board and ask for your confirmation.

CHAIRMAN PERATA: Thank you, sir. I'll understand if you have to leave.

Welcome.

MR. WILSON: Thank you, Mr. Chairman.

CHAIRMAN PERATA: Would you like to make an opening statement?

MR. WILSON: Well, yes, I would.

Good afternoon, Members of the Committee.

COMMISSIONER GARAMENDI: Excuse me, Mr. Chairman. I'm going to ask my Chief Deputy to take my position here. I do have to leave for another appointment dealing with the University of California in Merced.

CHAIRMAN PERATA: Understood.

COMMISSIONER GARAMENDI: He can answer whatever questions there might be. That's Rick Baum.

MR. WILSON: Thank you for allowing me the opportunity to meet with you today.

I will just take a few minutes and give a high level overview of some things that I think are very important. Certainly the statutory responsibility that the Commissioner mentioned that reside within our office is very critical to sustain our focus and our mission. We take very seriously the concept of the Commissioner's responsibility to liquidate these

1 troubled companies and to protect the claimants.
2 We also take very seriously the fiduciary
3 responsibility to liquidate the assets and distribute them to
4 the policy holders.
5 One of the higher level goals, and I'm sure that
6 we may get into that a little bit in this discussion today, is,
7 I came into this office, took what I call a 30,000 foot view of
8 what's taking place here. We have some 27 companies under our
9 control at this point. And depending on how you measure the
10 asset base, it could be in excess of $4 billion. It's a fair --
11 a major amount of dollars.
12 What we do through the Liquidation Office, what
13 I've done is step back and look at what is the operating
14 environment, the infrastructure that's in place. So certainly
15 when I look at the short-term goals, something to measure the
16 success of the organization by, it's focused very clearly on
17 developing stronger infrastructure, a stronger control
18 environment.
19 And as I look at longer goals, it's not
20 dissimilar. It's continuing to strengthen that infrastructure
21 over a period of time, and to continue on the goals, but also
22 start to develop some benchmarks so we can go back in a year,
23 two years, three years and say, "How have we progressed through
24 this process; how successful have we been?" So, we'll continue
25 the measurement side as we push forward in developing the
26 infrastructure and treating the policy holders and the claimants
27 fairly and equitably.
28 So, thank you, Mr. Chairman.

CHAIRMAN PERATA: Thank you.

Given that there have been seven CEOs in the last seven years, I feel compelled to ask, do you like it so far? Do you think you might want to stay?

MR. WILSON: Well, I think you've identified the problem.

It's a great group, there's no doubt. I have a great deal of respect for Commissioner Garamendi and for Rick, what they've done with taking the hard stance of having qualified people in the organization, the fair and ethical treatment of the policy holders and the claimants. It is a great group. I mean, it's a great organization that needs some guidance and direction, some management skills.

CHAIRMAN PERATA: You saw the audit.

MR. WILSON: That was on my desk the first day I came in, and it was still addressed to me, and I thought about it.

SENATOR BOWEN: That should be grounds for disqualification.

[Laughter.]

MR. WILSON: I did get them to change who it was addressed to.

CHAIRMAN PERATA: That's good.

Any questions for Mr. Wilson.

SENATOR BATTIN: I'll move the confirmation.

CHAIRMAN PERATA: We have a motion to approve.

Anybody in the audience interested in speaking in favor of? In opposition to?

Seeing none, Secretary please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Five to zero.

CHAIRMAN PERATA: There you go.

MR. WILSON: Thank you very much.

CHAIRMAN PERATA: Thank you for being here.

MR. BAUM: Thank you all. I appreciate it.

CHAIRMAN PERATA: Senator Ortiz, would you and your mystery guest like to come forward.

SENATOR ORTIZ: Mr. Chair and Members, if I may, it's my pleasure and honor to introduce Dana Appling before the Rules Committee today.

I was asked to introduce Dana. I've known her for a number of years. We first met when she served as an attorney with Leg. Counsel. I was a youngster still in law school and worked with Leg. Counsel at the time. She was one of the stars in Leg. Counsel at that time, and there were many.

She went on to serve very, very ably and with honor and the highest of legal professional standards as the

legal counsel to our Sacramento Municipal Utility District. And it was a loss when she moved on to move to Boston.

She has extensive experience not only as having served as the chief counsel of a private energy conservation company, she's also served with the Legal Aid Society of San Diego, and more importantly she was a really wonderful key individual in our local community in Sacramento when we served together on the Capitol Unity Council, as well as we were part of the same leadership development class in the American Leadership Forum.

She will bring a great passion for ratepayers. She'll understand sound, good business policies, and she'll bring the highest of professional integrity and experience. I believe she's going to make an excellent candidate to direct the Office of Ratepayer Advocate.

I would request that you all consider her nomination in a favorable light.

CHAIRMAN PERATA: Thank you.

Now it's your turn. Welcome.

SENATOR ORTIZ: Thank you, Mr. Chairman.

CHAIRMAN PERATA: You're welcome.

MS. APPLING: Thank you very much, Senator Ortiz.

Mr. Chairman and Members, thank you very much for the opportunity to speak to you today. I'm very happy to be here.

It has been a supreme honor to me to have been appointed by the Governor to be Director of the Office of Ratepayer Advocates.

It has also been a pleasure and a truly rewarding experience. As you know, ORA has a statutory mandate to represent the interests of ratepayers of the regulated public utilities, with the goal to obtain the lowest possible rates consistent with safe and reliable service levels. It is my personal mission to ensure that this mandate is upheld and the legislative goals are accomplished.

ORA has a rich and capable and talented employee population of utility experts, including economists, accountants, engineers, financial and policy analysts, and lawyers, many of whom have been doing this job and serving the ratepayers for many years. We all stand together united in our dedication and commitment to ORA's mandate and mission.

I look forward to answering your questions and hope to learn through your questions more about how to represent the ratepayers.

CHAIRMAN PERATA: Thank you.

Senator Bowen? Are you sure? PUC?

SENATOR BOWEN: I have no shortage of opportunity to spend working on utility issues.

CHAIRMAN PERATA: Okay.

Any other Members without a shortage of opportunities?

SENATOR BATTIN: I do. I promised I wouldn't bring up the whole telecom thing about my district, and zones for toll calls, so I'll spare you that.

But I do want to bring up the issue of what you view the role of the Office of Ratepayer Advocates to be in

regards to energy, electricity prices?

As you know, and the background for our Members here as well, where I live, in the Coachella Valley, we are dramatically affected by state public policy which puts a lifeline rate on usage. If you go over 100 percent of what the state determines arbitrarily, then you pay more per kilowatt hour. And if you go over 130 percent of that in your zone, you pay even more. If you go over 200 percent of that, you pay more.

It is a social policy designed to encourage people to use less power, but in the summer, when it's 120 degrees, you don't really have a choice. You have to use your air conditioning. We have people who pass away in the desert because they use too much, or they try to save too much, and they get overcome by the heat.

Now, I understand the purposes behind that policy. I disagree with it, but I understand that it was an attempt to do two things. One is trying to conserve power. And two, it's trying to use less power resources, meaning it's more of an environmental move than anything else.

I also understand the effect that it has on the people that I live with and represent, which means they pay an inordinate amount of money in the summer because they inevitably go beyond what the state has allocated to them as their kilowatts per month.

It is especially onerous to them in the months of May and October, because the state has decided that those are winter months. God decides that they're summer; the state says

they're winter. And the amount of power that you're allocated drops dramatically, almost by a half to two-thirds.

But when it's 105 degrees, it's not 70, and you've got your air on, and suddenly you're way beyond the 100 percent of the baseline; you're past 130; you're over the 200 percent. And you are paying a lot per kilowatt.

Your position as the head of ORA is to, I believe, look out for the ratepayer.

MS. APPLING: Yes.

SENATOR BATTIN: My ratepayers in my district need looking out for because they are paying a lot more money than I think is fair.

How are you, and I know that this is all past tense, and we've all ready determined this in the Legislature and passed a law. I know you can't change the law. I'm not asking you to do that.

What I'm asking you to do is tell me in the future, if there was something like that coming forward, what type of position should I expect from ORA? Would you be looking out for the ratepayer in the pure form of, "Well, that's going to cost them a lot more money, so we would think that there should be other options to do that," or you go in and say, "that's a good social policy to conserve power, so I think that we'll support that."

MS. APPLING: I think in line with our mandate, the first thing we look at is what the cost is going to be. And we will, in a commission proceeding, where something like this might get aired, is to put a price tag through our analysis of

the proposal on what that is going to cost the ratepayers. And then we look at ways to maybe offer some alternatives so that it wouldn't be such a difficult rate impact. And then we'd have to do some balancing, honestly.

We do have to look at, if there's legislation, do we have to work within that legislation. If there is an environmental impact that could potentially cost more down the road, to some extent that is factored in. I can't say how much it would be factored in in any particular situation.

But we do try to come up with alternatives to a large rate impact, even if there are environmental considerations as well.

We also have to balance all of the ratepayers that we serve and try not to allow for an extraordinarily large rate impact in one group, where another group is paying less. And there's also the cause/causation side of it, too.

And we just try to follow the rules and do the best we can for our entire constituency.

SENATOR BATTIN: Thank you.

CHAIRMAN PERATA: Any further questions?

SENATOR BATTIN: I'll move the confirmation.

CHAIRMAN PERATA: I was going to ask you one, since he didn't want to talk about it, about cell phones.

What's your role in not only the setting of the rates, but the quality of service, specifically like dead zones?

MS. APPLING: The quality of service?

The FCC has jurisdiction over the rates for wireless phone companies. The PUC has jurisdiction over terms

1 and conditions of the service, including quality of service,
2 information on bills, accurate disclosure, customer service
3 instances.
4 And those issues were addressed in the Bill of
5 Rights proceedings before the commission and as adopted by the
6 commission last year, and subsequently suspended.
7 Because that proceeding is before the commission
8 again to try to build the rules for those rights for consumers
9 where we are participating again in the new proceedings, we did
10 participate very aggressively in the four years that developed
11 the first Bill of Rights. We will be back, and we have
12 partnered in these proceedings with the Attorney General's
13 Office, and we'll continue to do that. And our position has not
14 changed.
15 CHAIRMAN PERATA: Okay. So if I have dropped
16 calls, I just give you a buzz?
17 [Laughter.]
18 MS. APPLING: I can give you a number.
19 CHAIRMAN PERATA: Fair enough.
20 Any questions? Anyone here who's interested in
21 speaking in favor of?
22 MS. ROSA: Good afternoon. I'm Kris Rosa with
23 the Silicon Valley Leadership Group.
24 Dana is a highly committed, qualified, balanced
25 leader, well able to serve as Director of the ORA.
26 We're representing a wide variety of ratepayers
27 in the Silicon Valley, and the Silicon Valley therefore highly
28 supports her confirmation.

CHAIRMAN PERATA: Thank you.

MR. GOLDBERG: Lenny Goldberg, speaking on behalf of TURN.

We are consumer advocates at the Public Utilities Commission. We have for years depended on ORA for a variety of important data gathering, advocacy. Many, many issues that we're too small to cover, ORA plays an extremely important function.

Ms. Appling, in our experience since she's been appointed, has been truly committed to making ORA a really strong, functioning organization, seeking either through the legislative process or with the commission to strengthen the organization, to get appropriate legal counsel.

We think that ORA has been given short shrift for a long time, and we've been extremely impressed by Ms. Appling's efforts to strengthen it, and really do the job that ORA is supposed to do.

So, we strongly support her nomination.

CHAIRMAN PERATA: Thank you.

MR. PEREZ: Hi. My name is Jose Perez. I'm the publisher of the Latino Journal. And I'm here also representing Nancy Zorinda, who's the Director of the Spanish Language Academy.

On a personal level, since being former President of the Sacramento Hispanic Chamber of Commerce, working with Ms. Appling as Chief Counsel for SMUD, I can tell you that I totally agree with the character references that they've made about Ms. Appling. She is a wonderfully knowledgeable, experienced woman

with a lot of breadth and depth of experience and highly qualified for this position.

She recently addressed the California Utilities Diversity Council, which I chair. And I've got to tell you, everybody was impressed.

We're very interested in seeing the California Public Utilities Commission reach out to all segments of the population, especially those segments that do not -- where English is not their primary language. And we think that she is one person that can really help the commission in that regard.

So, we strongly urge your Aye vote on her confirmation. Thank you very much.

CHAIRMAN PERATA: Thank you.

MR. CHASET: Good afternoon. I'm Larry Chaset with Commissioner Grueneich's office at the Public Utilities Commission. And I'm here to strongly support on behalf of Commissioner Grueneich the confirmation of -- potential confirmation of Dana as the Director of ORA.

She has an excellent balance of leadership skills, creativity, commitment, knowledge to really maintain a strong and effective voice for the consumer of utility services here in California. And Commissioner Grueneich strongly urges you to endorse her and confirm her today.

Thank you.

CHAIRMAN PERATA: Thank you.

Anyone here in opposition?

Seeing none, do you have family here?

MS. APPLING: No, they came last week.

[Laughter.]

MS. APPLING: And we had a wonderful day.

[Laughter.]

CHAIRMAN PERATA: You should be a politician.

We have a motion to approve. Please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Five to zero.

CHAIRMAN PERATA: Congratulations.

MS. APPLING: Thank you very much.

CHAIRMAN PERATA: Next, Ms. Greta Wallace. We're graced with all these celebrities today. I take it you're going to introduce Ms. Wallace?

ASSEMBLY MEMBER BASS: I am, if that's okay.

CHAIRMAN PERATA: Absolutely. Go ahead and proceed.

ASSEMBLY MEMBER BASS: Good afternoon, Senator Perata and Members of the Committee.

I'm here today in strong support of the

1 confirmation of Greta Wallace as Director of the Department of
2 Child Support Services. Ms. Wallace brings to the department a
3 solid background in state government and public policy
4 experience. She has practiced law for 15 years, 13 of which
5 have been in state government. And while at the Department of
6 Social Services, Ms. Wallace was at the forefront of crafting
7 state policy protecting the rights of children in foster care
8 and developing new state policy protecting the health and safety
9 of children in out-of-state group home placements.
10 Her commitment to children and the development of
11 sound public policy have been the hallmark of her tenure in
12 state service. As an administrative law judge, Ms. Wallace
13 presided over child support cases from across the state,
14 reviewing adherence to state law, regulation, and ensuring
15 individual rights were protected. This prospective gives
16 Ms. Wallace keen insight into how California's child support
17 program impacts children and families, and the unintended human
18 consequences of state and local policy.
19 California's child support program is facing
20 complex challenges ahead. It's critical that the department
21 director provide a clear vision and a process to reach the goal
22 of statewide implementation of California's child support
23 automation system by September 2006. Since her appointment in
24 October 2005 [sic], Ms. Wallace has demonstrated a
25 collaborative, systematic approach to put California's child
26 support program back on track.
27 Mr. Chairman, I am pleased to introduce you and
28 the Committee to Ms. Greta Wallace.

MS. WALLACE: Thank you, Assemblywoman Bass.

CHAIRMAN PERATA: Thank you.

Welcome.

CHAIRMAN PERATA: Good afternoon, Chairman Perata and Members of the Committee. I am truly honored to appear before you here today for this confirmation hearing.

During my years in public service, protecting and improving the lives of children has been my passion and a large part of the focus of my career. I have cherished, and I have taken very seriously each opportunity that I have had to represent children in court as well as in administrative proceedings, believing that I was a voice of the voiceless.

During my career, I have assisted in the formulation of policies, procedures, and practices that have afforded children greater protections and ensured their personal safety. In doing so, I've always understood how critical those decisions were. I understood that those decisions impacted the lives of children and their families in profound ways.

The appointment to serve as Director of the Department of Child Support Services provides me with yet another opportunity to continue to work to improve the lives of children in California. As Director, my primary objective is to be certain that the financial security of children in California is met, and to help with the self sufficiency of families, so that families do become more self-sufficient through their receipt of child support payments.

Among my top priorities as Director are to improve the performance of California's child support program,

1 implement the statewide automated system, and seek relief from
2 the federal penalties.
3 I thank you for the opportunity to appear before
4 you here today, and I welcome your questions.
5 CHAIRMAN PERATA: Thank you.
6 Members? Senator Bowen.
7 SENATOR BOWEN: Thank you.
8 First let me thank you for being willing to take
9 on this job. I've been, on and off, looking at the state's
10 child support computer system problem since about 1994, and it
11 really does feel like the briar patch of legend.
12 It's my understanding -- and you're not to take
13 this as a reflection on you because it is but a history of where
14 California is -- we're still 49th out of 52 states, if you
15 include Guam and the District of Columbia, in collections.
16 How do you see us getting at least average?
17 Average would be a nice goal in this situation, though generally
18 not what I aim at in life.
19 MS. WALLACE: Senator Bowen, I do see that
20 happening.
21 One of the problems in California is that we do
22 not yet have our statewide automated system implemented. Upon
23 implementation of that system, we do anticipate that collections
24 will improve and will increase due to efficiencies.
25 We also -- I am working and my department is
26 working very closely and carefully with the directors of the
27 child support agencies to make certain that there are best
28 practices that are shared amongst the counties to help improve

1 performance. We are -- I'm sorry -- we are solely focused on
2 performance.
3 As you know, we're measured in the five federal
4 performance measures. And in focusing on performance, we are
5 always working with the counties to help establish better
6 business practices and better implementation strategies that
7 lead to greater collections.
8 SENATOR BOWEN: Obviously the computer system is
9 the backbone of this whole thing. If the people who are working
10 on collections have to spend a lot of time with paper files, or
11 simply can't get access to information, the whole thing slows
12 down.
13 But when you talk about best management
14 practices, can you give me an example of what kinds of things
15 you might help counties do better?
16 MS. WALLACE: We've helped them, for example, in
17 identifying strategies that have led to increased collections,
18 such as making certain that child support orders, when they are
19 initially established, are established in the right amount. If
20 we establish them in the right amount, we find that the obligors
21 are more willing to pay, the obligors are not apt to go
22 underground because the orders are just out of their reach.
23 That is one strategy.
24 Another is that we have encouraged early
25 intervention in the child support cases. That is, if an obligor
26 has not paid his child support in 30 days, we call the obligor
27 to find out what the problem is, sometimes determine that the
28 obligor may no longer be working. There may be a need to modify

the court order downward. We find that there is more adherence to paying the child support order if there is some early intervention done with the obligor.

SENATOR BOWEN: So basically you're saying that the bigger the outstanding debt becomes, the less likely you are to get --

MS. WALLACE: Absolutely. That's what we have found.

SENATOR BOWEN: It just seems impossible, and so people give up.

MS. WALLACE: Yes. That's been our experience. So, it's very important to establish reasonable orders, and also important to try and intervene early on when the order is not being -- when the obligor is not paying that child support order.

SENATOR BOWEN: With regard to the penalties, this is another issue that's been ongoing for longer than I wish I could remember, what can the Legislature or the Governor do to help us be able to re-invest money that would otherwise go to penalties? Have we done everything in your view that is possible in order to deal with the federal penalties?

MS. WALLACE: Yes. This administration has -- did seek and did receive a deferral for our federal penalty this year. And we have also been working with the Governor's Office in Washington, D.C., to craft legislation that would essentially require California to pay 10 percent of the penalty during the final year, which would be 2006, as opposed to paying the entire amount and then having 90 percent of that penalty reimbursed to

1 the state after we have been certified.

2 We believe that that is a sound course, and

3 that's what we are pursuing at this time.

4 SENATOR BOWEN: One final question.

5 I understand that it's your expectation that once

6 the new system is up and running, that we are likely to go

7 through a period where we have, let's call it transitional

8 issues. There will be undoubtedly some programing errors, data

9 transfer errors, and so forth.

10 How are you planning to handle those? I know my

11 office has been through this once before with a computer system.

12 And the district offices and the Legislature Members spent a lot

13 of time with people who called because they have a problem, they

14 can't get through the new system, or there's some issue.

15 Is there a way to identify personnel in advance,

16 add people temporarily, get vendor assistance? How can we best

17 get through what's always a difficult period when you migrate

18 from one system to another?

19 MS. WALLACE: Senator Bowen, we're trying to

20 determine exactly what steps that we can take.

21 Just yesterday I, along with the leadership in my

22 department, met with four other directors of child support

23 programs throughout the United States. We met with the Director

24 of New Jersey. We met with the Director of Pennsylvania,

25 Florida, and Michigan. And they have the their systems up and

26 running.

27 The whole emphasis of that meeting was for us to

28 learn from them, to try and identify exactly what you're

referring to now so that we can then take steps to try and make certain that we don't run into the same problems that they ran into.

So, we are capturing that information now from lessons learned from other states as well as from the federal government. And we'll be attempting to put in place certain actions and strategies to make certain that we can at least be ready for the kinds of issues that may likely, we are told, will come up during the conversion and when we turn on the switch, so to speak, for the new project.

SENATOR BOWEN: Are you converting in a county-by-county system? How's the conversion --

MS. WALLACE: Yes, we are. We are converting. There's a roll-out. We are not doing it all at one time.

We're working very closely with the counties during the roll-out period, making sure that they understand exactly what will be happening in their county so they can clean up their data and do other things that are necessary prior to the implementation of the system in their counties.

SENATOR BOWEN: Great. I wish you the best.

MS. WALLACE: Thank you.

CHAIRMAN PERATA: Senator Cedillo.

SENATOR CEDILLO: I wish you the best also.

There seems to be a couple things. One question is what the Legislature can do to help you?

You talked about the front end, when the obligor parent owes money or when it's an unreasonable amount. There's a plan in place -- [Unintelligible due to microphone static]

I'll make my comments short. What can the Legislature do? You indicated how we're more effective when the obligor knows exactly it's an accurate amount --

MS. WALLACE: Yes, an accurate amount and --

SENATOR CEDILLO: -- a manageable plan, and with an engagement by the state, early engagement when they fall off track to get them right back on track.

What are some of the things the state could do to help?

MS. WALLACE: The Legislature?

SENATOR CEDILLO: Right.

MS. WALLACE: We are going to be looking at some potential legislative fixes or legislative changes in our program once we get our system up and running.

Right now we're really focused on implementing that system and having it certified. But we are having discussions within the department to try and determine if there are legislative fixes or changes in the law that could help improve the performance in California.

There are certain ideas that, you know, we likely will be thinking of and assessing, but right now I think understanding what the department is currently going through, we're likely going to be reaching out to your district office staff because, as Senator Bowen said, when we do start implementing this project, we expect that some of the obligors and some of the custodial parents, because there will be changes to how they will be receiving their child support in some instances, may be frustrated. So, we want you all to know what

is happening in our department.

I think one of the things that I can do is make sure you and your district office staff are informed.

At this point, I don't have any other suggestions for legislative changes that would help improve the program, but I'd like to get back to you on that after we discuss that further with my staff.

SENATOR CEDILLO: Senator Bowen indicated we've been grappling with this for over a decade with significant consequence.

I applaud you. I think your proposal to simply waive 90 percent and get the 10 percent, or however that formula works, rather than wait for reimbursement makes sense. I hope that doesn't encumber our program from being accepted by government.

I'm concerned. The Department of Motor Vehicles has new challenges with the federal Real I.D. Act. They have some new responsibilities. They'll have to store 22 million sets of documents. No doubt we'll have to buy new computers.

From this experience, what could you outline for them? What could you say to them?

We're on a three-year deadline. What could you say to them that they need to do?

MS. WALLACE: In terms of bringing up an IT system, a huge IT system?

SENATOR CEDILLO: Exactly.

MS. WALLACE: I would say that I believe that we will be successful because I believe that we have the resources

1 that we need for the project. We have the talent on the team in
2 terms of the expertise, both from IT as well as from the
3 program.
4 And we have a very comprehensive and detailed
5 plan that we follow very carefully, and we make certain that we
6 meet our milestones, that we have appropriate people who are
7 overseeing what we are doing and who also can objectively speak
8 to us and let us know whether or not we are designing the
9 correct strategy for what we want the outcome to be, and for
10 whether or not we are correctly implementing.
11 So, I would say resources in terms of dollars,
12 also in terms of talent. You need very committed staff, which I
13 have at my department, very dedicated staff.
14 We also, as I said, have expertise in the area,
15 and are very committed to adhering to milestones, timelines,
16 timeframes, and remain flexible in terms of any changes, small
17 changes in approaches that we may need to make in order to be
18 successful in the end.
19 SENATOR CEDILLO: So, you need resources. You
20 mentioned talent twice. You feel confident in the talent that
21 you have.
22 Is there anything the state can do to make sure
23 that you have -- or I'm concerned about DMV and their need to
24 ramp up within such a short period of time.
25 You mentioned talent twice, a plan with
26 milestones, oversight, and appropriate strategies.
27 MS. WALLACE: I believe focus is also critical.
28 You must be single-focused on what it is you're intending to do

if you're bringing up a project.

As I mentioned to you earlier, yes, we do want to think of legislation in the future, but right now we are very single-focused on bringing up this IT project. And the staff within my department are also very focused on that because we know it will lead to, in our instance, the development of a more improved program and toward increased collections.

So, I would say that the department should be very focused.

SENATOR CEDILLO: Okay, thank you.

MS. WALLACE: Thank you.

CHAIRMAN PERATA: Would you just review the 10 percent, 90 percent thing again?

MS. WALLACE: Yes, Chairman.

Currently the entire penalty must be paid. Upon certification, the federal government then reimburses the state 90 percent of that final penalty.

The legislation that we are currently interested in would be legislation that would require the state to pay only 10 percent during that last year of implementation.

CHAIRMAN PERATA: Is this federal legislation?

MS. WALLACE: Yes, it is.

CHAIRMAN PERATA: It's in Congress now?

MS. WALLACE: Well, we are working with the Governor's Office in Washington, D.C., writing the language and moving forward in terms of moving that legislation.

CHAIRMAN PERATA: Good. We could use it.

I know you have family here. Would you like to

1 introduce them?

2 MS. WALLACE: Yes I do. I have my husband, Sam

3 Wallace, and my son Christopher.

4 CHAIRMAN PERATA: Welcome.

5 Anyone in the audience come forward in support.

6 MR. OPPENHEIM: Mr. Chair and Members, Dave

7 Oppenheim, Executive Director of the Child Support Directors

8 Association.

9 CSDA, which represents each of California's 47

10 counties and 5 regional local child support agencies, is pleased

11 to support the nomination of Greta Wallace. Director Wallace

12 has demonstrated leadership, vision, and a passion for the

13 program since she joined DCSS in October of 2004.

14 As one of her first actions, Director Wallace met

15 with the CSDA Board of Directors and outlined her priorities for

16 the program. Those priorities were then and are now program

17 improvement and successful implementation of the automated

18 system.

19 Concerning program improvement, Director Wallace

20 quickly convened a work group to draw upon the talent and

21 experience of local directors to provide specific suggestions on

22 how to improve the program. Director Wallace has also indicated

23 that the successful and timely implementation of the California

24 Child Support Automation System is also a top priority, and to

25 that end, getting out of penalties.

26 Director Wallace has proactively engaged CSDA as

27 a resource to receive local input and advice on nearly every

28 aspect of the automation project.

Director Wallace has been accessible, both to CSDA and local child support agencies. She has additionally created an atmosphere within her department that encourages dialogue and open communication between the counties and the state.

For these reasons, the Child Support Directors Association strongly endorses the nomination of Greta Wallace.

CHAIRMAN PERATA: Thank you.

Yes, sir.

MR. BROWNING: Good afternoon. I'm Philip Browning. I'm the Director of the Los Angeles County Child Support Services Department, and I'm also currently the President of the Child Support Directors Association in California.

I want to support the nomination of Greta Wallace. I believe she has been in her short tenure here very helpful to the counties, which you know have about 8,000 staff. And we are responsible for thousands and thousands of child support cases every day which come to our attention.

I think she brings a sense of commitment. I think she brings a willingness to listen. I think she brings excitement and energy.

I do understand some of the problems facing her. I've been the Director in the State of Alabama, and the Director in the District of Columbia, and so I have an idea of what kind of challenges she is really facing.

I think, Senator, you have a lot of good questions about how we in California can do better. Just in

L.A. County we've modified over 40,000 orders within the last two years to a more accurate, payable level, which is critical. I think we in California have so long processed things in an automated fashion that we have to take a step back and really work with the customers, the noncustodial parties and the custodial parties.

I think Greta brings a sense of commitment to working with families and children that is really refreshing. So, I do support her, and I appreciate your vote for her.

CHAIRMAN PERATA: It's a South L.A. Accent; isn't it?

[Laughter.]

MR. BROWNING: It certainly is from the south, sir.

CHAIRMAN PERATA: Thank you.

Anyone else? Anybody here in opposition?

Seeing none, do we have a motion to approve.

SENATOR BATTIN: Move.

CHAIRMAN PERATA: Secretary, please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

1 SECRETARY WEBB: Battin Aye. Perata.
2 CHAIRMAN PERATA: Aye.
3 SECRETARY WEBB: Perata Aye. Five to zero.
4 CHAIRMAN PERATA: Congratulations.
5 MS. WALLACE: Thank you.
6 CHAIRMAN PERATA: Scott Drexel, State Bar Chief
7 Trial Counsel.
8 MR. DREXEL: Thank you, Mr. Chairman and Members
9 of the Committee. Good afternoon.
10 My name is Scott Drexel. I am very honored to
11 have been appointed by the Board of Directors of the State Bar
12 of California as its Chief Trial Counsel.
13 I'm also honored to appear before your Committee
14 in connection with your consideration of my confirmation in that
15 position by the State Senate.
16 I'm not a stranger to the attorney discipline
17 system. I've been employed by the State Bar in various
18 capacities for 27 years. I have briefed and argued more than 25
19 attorney disciplinary cases before the California Supreme Court.
20 And for the last 16 years, I've served as Administrative Officer
21 and Chief Counsel to the State Bar Court.
22 The Chief Trial Counsel position to which I have
23 now been appointed plays an especially crucial position in the
24 role -- role in the regulation and discipline of attorneys in
25 California. There are now more than 200,000 attorneys in
26 California, more than 150,000 of which are active members.
27 My office received more than 90,000 calls during
28 2004 regarding the conduct of California attorneys.

1 In addition to investigating and prosecuting
2 meritorious complaints against these attorneys, my office also
3 annually receives more than 3,000 statutorily mandated reports
4 from courts, financial institutions, and insurance companies
5 regarding attorney misconduct.
6 We send strike teams to the scenes of major
7 accidents and natural disasters to prevent the improper
8 solicitation of clients by attorneys and cappers at the scene.
9 We also seek the assistance of the Superior Courts in assuming
10 jurisdiction over the practices of attorneys who have died, who
11 have been disbarred or have resigned, or who have physical or
12 mental incapacities which make them incapable of attending to
13 the needs of their clients.
14 In my June 16th letter to your Committee, I
15 outlined my goals for my first four-year term as the State Bar's
16 Chief Trial Counsel. Without repeating them at length here, I
17 would like to condense those goals into three broad areas.
18 First, I intend to maximize the efficiency and
19 effectiveness of the office of the Chief Trial Counsel through
20 adjustments to its organizational structure, the establishment
21 and implementation of appropriate performance expectations for
22 staff, and the effective management supervision of the entire
23 discipline system.
24 Second, I intend to increase educational outreach
25 and communications with both the public and with State Bar
26 members regarding the services provided by the State Bar,
27 avoiding the conduct -- instructing members on avoiding the
28 conduct that leads to disciplinary complaints and proceedings,

1 and assisting the public in becoming more informed users and
2 consumers of legal services.
3 Third, I intend to make more effective use of the
4 Chief Trial Counsel's resources in curtailing the unauthorized
5 practice of law by both non-attorneys and by suspended and
6 disbarred attorneys. And I intend to continue and increase the
7 State Bar's efforts to curtail the abuse by attorneys of
8 existing legal remedies, such as the Business and Professions
9 Code Section 17200, unfair competition laws, and the Americans
10 with Disability Act lawsuits.
11 I've already started to work on these goals since
12 I became the Chief Trial Counsel on April 11th. I look forward
13 to achieving these and the other goals that were set forth in my
14 letter of June 16th.
15 And I'd be pleased to answer any questions that
16 you may have.
17 CHAIRMAN PERATA: Thank you.
18 Only one lawyer on the dais right now. Any
19 questions?
20 SENATOR BOWEN: My only question is about the
21 backlog and how you see us turning that at least into something
22 that's timely. I guess a frontlog wouldn't be correct.
23 MR. DREXEL: Well. The backlog has averaged in
24 the last several years around 400 cases. The backlog is
25 statutorily defined as investigations which have been pending in
26 my office for more than six months, or in the case of complex
27 investigations for more than a year.
28 I think the guidelines that were established by

1 the legislation were established before a couple things happened
2 which make it more challenging to eliminate the backlog
3 completely.
4 First, legislation was adopted which gave
5 attorneys the right to request additional time to respond to
6 contacts by the State Bar regarding their conduct so that if
7 their practice -- the level of their practice demands that they
8 can request at least an additional 30 days to respond to our
9 contacts asking them for information about their conduct.
10 Secondly, we have also initiated by rule an
11 opportunity for members before formal disciplinary charges are
12 filed and the matters become public to have an opportunity, if
13 the matter can't be resolved without the filing of charges, for
14 the member to request a hearing or a conference before one of
15 our State Bar Court judges to discuss the matter, and for the
16 judge to give their evaluation of the matter.
17 Those things add time to the pendency of the
18 investigation. So, those are challenges in trying to complete
19 those within the statutory timeframes.
20 SENATOR BOWEN: How many of the cases are
21 resolved in that way?
22 MR. DREXEL: About a quarter of the cases are
23 resolved at what we call the early neutral evaluation conference
24 level.
25 Still, I believe that there has not been
26 sufficiently rigorous oversight. We have reports, computer
27 reports, that we can generate of the aging of our cases. And I
28 think there has not been a systematically sound way of -- or we

1 have not implemented a statistically sound way of overseeing
2 that to make sure that we are attacking the older cases first,
3 and make sure that they don't age any more than they need to.
4 I've all ready discussed with my management staff
5 ways that we can -- that we can be more watchful of those cases
6 to eliminate or certainly minimize the number of cases that go
7 into backlog status.
8 SENATOR BOWEN: It's my understanding that you've
9 now developed what I view as sort of the State Bar equivalent of
10 a triage system, where you deal with the most serious cases
11 first.
12 What does that do to the backlog on the cases
13 that are deemed to be less serious?
14 MR. DREXEL: Well, the triage system was
15 basically adopted following the shut down of the State Bar in
16 1998, and because there were many more complaints that were
17 received than we could hope to investigate.
18 So, the triage system was developed to basically
19 address the most serious ones. And we actually declined to
20 prosecute matters which were -- may have been violations but
21 which we didn't have the resources to deal with.
22 I believe we're at the point now where we do not
23 need to triage matters, that we can and should be investigating
24 all matters, and trying to resolve those.
25 Of course, we always need to give higher priority
26 to the most serious allegations of misconduct.
27 SENATOR BOWEN: Not only do I have no objection
28 to the triage system, it actually makes sense to me because if

1 you're looking from the standpoint of the public and the concern
2 about future potential clients of an attorney who is
3 experiencing difficulties or misconduct, it's certainly better
4 if you've got somebody who's engaged in gross misconduct to be
5 as speedy as is possible, and to worry less about somebody who
6 didn't get a final signed copy of their fee agreement in one out
7 of 2,000 cases. There's just less opportunity for public harm.
8 MR. DREXEL: Those matters, those very minor
9 matters are matters that are typically resolved at a very low
10 level anyway without a lot of use of resources.
11 But my concern as the Chief Trial Counsel also is
12 that by not enforcing certain rules or statutes, that we are
13 sending a message to members that they can ignore certain
14 requirements.
15 SENATOR BOWEN: So, what do you anticipate in
16 terms of having a case flow and a backlog? What should we be
17 looking at?
18 We're never going to have perfection, but what's
19 the best situation we should expect?
20 MR. DREXEL: I believe we can get to a situation
21 where we would have a backlog of no more than 200 or 250 cases,
22 as compared to the current 400.
23 SENATOR BOWEN: Is that doable within existing
24 resources?
25 MR. DREXEL: Yes, I believe it is.
26 SENATOR BOWEN: Thank you.
27 CHAIRMAN PERATA: Any other Member questions?
28 Would you just talk a little bit about your

1 diversionary program for substance abuse?
2 MR. DREXEL: Yes. It has two components to it.
3 There's the treatment component, which is the lawyer assistance
4 program. We have a large number of attorneys. It's completely
5 voluntary, completely confidential. Attorneys with or without
6 discipline issues can participate in that, and it deals with
7 either substance abuse, alcohol or other substances, or mental
8 health issues.
9 We also have the discipline component of it if
10 there is an investigation or proceeding against the attorney.
11 The attorney can seek to become involved in what we call our
12 alternative discipline program. In that program, the attorney
13 must enroll in the treatment side, the lawyer assistance
14 program, and must be able to demonstrate that there is a
15 connection between his or her substance abuse or mental health
16 issue and the misconduct that's alleged to have occurred. They
17 also have to basically confront their misconduct by working with
18 my office to reach a stipulation as to the conduct that had
19 occurred and the violations that resulted from that conduct.
20 The State Bar Court judge would then determine
21 whether or not the individual is eligible to go into our program
22 and would issue a tentative decision, informing the attorney
23 that if he or she goes through our program, is accepted,
24 complies with it, at the end of the process what will occur for
25 -- which could include a dismissal of the charges if the
26 misconduct is relatively low level, or a degree or a level of
27 suspension or the like, but which is a reduction from what they
28 otherwise might get.

1 The judge also informs the individual at the time
2 that if they go into the program and they do not succeed, what
3 will happen if they're terminated from the program. And that
4 can range up to disbarment.
5 CHAIRMAN PERATA: As percentage, how many cases
6 involve substance abuse?
7 MR. DREXEL: Currently there's about 42 percent
8 of the caseload of the State Bar Court are people who are either
9 in the program or in the process of being admitted to the
10 program, a very large number.
11 CHAIRMAN PERATA: Yeah, wow.
12 Do you have family here?
13 MR. DREXEL: Yes, I do. My wife Nancy, and my
14 daughter Jill, and my son Scott, Jr.
15 CHAIRMAN PERATA: Welcome. I was wondering why
16 you were here.
17 Well, do we have a motion to approve?
18 SENATOR BATTIN: Move.
19 CHAIRMAN PERATA: Please call the roll.
20 SECRETARY WEBB: Ashburn.
21 SENATOR ASHBURN: Aye.
22 SECRETARY WEBB: Ashburn Aye. Bowen.
23 SENATOR BOWEN: Aye.
24 SECRETARY WEBB: Bowen Aye. Cedillo.
25 SENATOR CEDILLO: Aye.
26 SECRETARY WEBB: Cedillo Aye. Battin.
27 SENATOR BATTIN: Aye.
28 SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Five to zero.

CHAIRMAN PERATA: Congratulations.

MR. DREXEL: Thank you very much.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:32 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of June, 2005.

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

OFFICE OF RATEPAYER ADVOCATES
Responses of Dana Appling, Director

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as director of the department?

Response #1:

My goal for ORA is to have sufficient resources to participate in all significant proceedings with formidable and effective representation of the interests of public utility ratepayers. Accomplishing this goal will require:

- **Improving the quality of ORA's analyses and testimony;**
- **Improving the effectiveness of ORA's participation in proceedings;**
- **Adequate staffing, with legal, clerical and consulting support;**
- **Sufficiently independent decision-making authority to quickly respond to unexpected applications and fast-track proceedings.**

Effective representation by ORA in fair deliberations should produce:

- **Reasonable rates for customers;**
- **Service quality for customers maintained or improved over time;**
- **Cost-effective and useful public purpose programs for education, low-income, elderly, disabled, and community groups;**
- **Increased utility responsiveness to customer needs.**

ORA's contribution to the record in proceedings should be sought after by decision makers and afforded considerable weight when decisions are written. ORA should always make a significant contribution to the process. ORA's mission is to ensure that ratepayer rights and interests are protected in the form of lower rates and safe, reliable, high quality service.

General Background

The Office of Ratepayer Advocates (ORA) represents the interests of the rate paying customers of water, energy and telecommunications regulated by the California Public Utilities Commission (CPUC). The mission of ORA is to achieve the lowest possible rates for service consistent with safe and reliable service levels. ORA is an independent division within the CPUC.

Question:

2. The budget and spending authority of your office has been the subject of much discussion recently. What do you believe are the pros and cons of providing the ORA with increased independence from the CPUC? What approach do you prefer? How would you reconcile ORA's need for independence from the CPUC with the benefits that come from co-location?

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Response #2:

ORA would benefit from greater control over and accountability for its budget with (1) the ability to develop its own budget and (2) the authority to spend funds according to its needs. ORA would also benefit by having an independent and dedicated legal counsel. Combined with the existing statutory independence of the Director (as a Governor's appointee, confirmed by the Senate), these measures should provide ORA with sufficient independence to pursue its statutory mandate to represent ratepayer interests without undue influence from the Commission.

An independent ORA is an integral and necessary part of the CPUC's process. In most proceedings, ORA provides the factual record upon which the Commission must rely to make its decisions. The ability of ORA staff to interact with Commission staff on procedural matters helps assure that the Commission's proceedings run smoothly and effectively, and allows ORA and the Commission to better coordinate the workings of their staffs. In addition, the movement of personnel over time from ORA to other divisions or to Commissioner's offices and vice versa helps the overall organization function better as ORA and Commission staff have a better idea of the work of the other.

Furthermore, there are more practical benefits to the current arrangement since sharing of some services is less costly than operating as a completely independent agency. Services currently shared with the Commission include human resources, information services, contracting, building space, and lawyers. Presumably, these services would require more funding for a stand alone ORA. Additionally, co-location also will save on travel time and rent, varying with the alternate location proposed.

Governor's Energy Reorganization Plan
The Governor's Energy Reorganization Plan proposes several changes to the state's energy agencies, including moving electric transmission and natural gas facility siting from the CPUC to the Energy Commission.

Questions:

3. How would the Governor's Energy Reorganization Plan affect the ability of consumer interests to be represented in electric transmission and natural gas siting decisions?

4. As the advocate for ratepayers, how would you propose consumer interests be represented?

Response #3 and 4

- **The Governor's Reorganization Plan would consolidate several of the state's energy programs. ORA suggests that the plan include statutory assurance that the process for consumer representation through public and stakeholder participation at the Department of Energy (Department) be open and accessible and provide for due process notice and comment opportunities prior to the issuance of final decisions. Moreover, ORA**

currently enjoys broad discovery rights and access to utility information which we would like to have available to us at the Department.

5. Do you think the Legislature should consider transferring the functions of ORA to another agency, such as the Department of Justice, just as other states have done? Please explain your reasons for supporting/opposing this move.

Response #5

No. Moving the Office of Ratepayer Advocates to another agency would not solve any problems, and would be-counter productive. ORA's independence from the CPUC and the co-location of the two within the same building are not mutually exclusive. The benefits of co-location are described more fully in Response #2, above.

Telecommunications
The CPUC is considering mergers between the four largest telecommunications companies in California.

Questions:

6. What is the effect of these mergers on residential and small commercial customers?

Response #6

ORA is currently examining the potential effects of the mergers on residential and small commercial customers in California, but has not yet filed its testimony in either case. With regard to the SBC/AT&T merger, ORA is continuing to seek information, through discovery, that will help it accurately assess the impact of the merger. Nevertheless, ORA is concerned that both mergers have the potential to extend SBC's and Verizon's market dominance, further damaging the competitive market for telecommunications services.

In mergers of this magnitude in this industry, ORA has two broad goals in predicting, analyzing, and addressing the effects of the mergers: (1) that consumers not be harmed in any way by the results of the merger, and (2) that California's economy not be harmed by the transfer of jobs, assets, markets for goods and services, or money out of the state.

In general, ORA applies the following goals principles across the telecommunications industry. We seek to provide for customers:

- **Guaranteed availability of basic services at reasonable rates, whether basic service is defined only as wireline service, or a high-speed connection;**
- **Service quality of at least a minimum threshold, for installation, repairs, and daily operations;**
- **Accurate customer information and disclosures about rates, services, complaints and remedies;**
- **Reduction and elimination of customer marketing abuses;**

- **Competitive choices, including a cafeteria of options, and customers are not forced to purchase all of their services from the same provider**

7. As the number of cell phone customers continues to increase and industry technology continues to change, how is your office advocating for cell phone customers?

ORA's primary advocacy on behalf of cell phone customers is in the CPUC's second Bill-of-Rights proceeding.

While the FCC has jurisdiction over rates charged by the wireless industry, the CPUC has authority over the "terms and conditions of service", including, terms and conditions of refunds and returns; the provision of clear customer disclosures and contract information; service provisions and coverage maps; and the information provided on bills. Rules regarding the terms and conditions of service were aggressively pursued by ORA throughout the four-year development of the CPUC's prior decision on the Bill of Rights. As this set of rules and regulations is now being re-examined in a new proceeding at the commission, ORA is working closely with the Attorney General to further the interests of wireless customers by advocating for essential consumer protections.

Digital Divide

California has long-standing policies for bridging the digital divide, but despite those policies, the digital divide continues to exist, particularly with respect to minority and rural citizens.

Question:

8. What are your recommendations for addressing the digital divide more effectively?

ORA supports the goal of the legislature to bring affordable access to "advanced services" (such as broadband internet access) to California. The Commission has conducted several proceedings specifically focused on digital divide issues, in which ORA has participated. There is no one "right" answer to achieve this goal. Barriers may be quite different for low income urban consumers than those which rural residents face. Problems of affordability and problems of access require different solutions. ORA believes that strategies to overcome these barriers must be focused and carefully tailored to meet the differing needs of these diverse communities. A "one size fits all" approach is unlikely to be efficient or cost-effective.

Consequently, ORA supports a variety of competitive and technologically neutral approaches to encourage widespread advanced communications access in as cost-effective and efficient manner as possible.

Electric Rates

California's electric rates are the highest in the Continental United States.

Question:

9. Has your office developed any recommendations to the CPUC on the reduction of high electricity rates?

Response #9

Yes. In every major ratemaking proceeding at the CPUC, ORA's primary focus is to identify unjustified or excess costs or expenses that the CPUC should reduce or eliminate to make electricity rates more affordable for California's ratepayers.

ORA's specific recommendations for electricity rate reductions include:

- **In April 2005, ORA filed two volumes of expert testimony challenging Southern California Edison Company's (Edison) proposed $370.4 million net increase in base revenues for 2006. ORA provided evidence to cut back Edison's projected expenditures by $462 million to achieve a $92.4 million *net decrease* in the utility's authorized revenues in 2006.**

- **ORA challenged Pacific Gas and Electric Company's (PG&E) proposed $447 million increase in electric distribution costs and $149 million increase in costs for utility retained generation. In May 2004, the Commission adopted an ORA negotiated settlement to scale back the proposed rate hikes saving ratepayers $322 million.**

- **ORA's analysis and audit of San Diego Gas and Electric Company's (SDG&E) accounts showed that SDG&E's proposed $59 million increase in electric distribution rates in 2004 was unwarranted. After ORA presented expert testimony recommending that the Commission cut the company's distribution rates, SDG&E agreed to limit its proposed increase to $5.5 million. This negotiated settlement saved ratepayers $53.5 million from SDG&E's original request.**

- **ORA negotiated a settlement agreement with PG&E in July 2004 that will disallow more than $67 million in recovery of revenues associated with PG&E's Electric Restructuring Cost Account. These monies are associated with restructuring costs incurred during 1997-2001.**

- **In the development of Renewable Portfolio Standards (R.01-10-024), ORA promoted methods of evaluating renewable energy sources that will allow ratepayers to obtain the maximum renewable benefits at the lowest cost while maintaining system reliability.**

- **ORA contributed to the development of electricity procurement strategies estimated to save ratepayers more than $22 million in 2004.**

- **In Edison's previous general rate case, the utility initially requested a $286 million increase in electric distribution rates, but reduced their request to $252 million after ORA issued testimony disputing the rate hike. Relying on ORA's recommendations on many contested issues, the Commission**

granted Edison a $70 million increase in July 2004, which reflects a $216 million reduction from Edison's original request.

Water

California is served by many small and retail water utilities, many of which are regulated by the CPUC. Some of those utilities have trouble making the necessary investment to ensure that their service is adequate and their water meets current drinking water quality standards without astronomical rate increases.

Question:

10. What role does your office play in helping those small water companies meet their public obligations?

Response #10

The legislature has established policies to encourage larger investor owned utilities to purchase troubled small water systems.[1] Larger water systems generally have greater financial stability, credit worthiness, borrowing ability, and the ability to promptly undertake important infrastructure investments needed to provide safe drinking water. ORA reviews these applications and supports such acquisitions when it believes the acquiring utility can provide adequate service without imposing inappropriate or extraordinary costs on its customers.

However, encouraging larger companies to buy out smaller ones may not always be the best solution. Public Utilities Code Section 2720 requires the CPUC to use fair market value (instead of the usually lower "book value") to establish the basis for determining rates for customers of an acquired water system. While this provides incentives to larger utilities to buy troubled water systems, it can also result in much higher rates for existing and/or acquired customers.

ORA is investigating other solutions to help smaller utilities meet current drinking water standards in ways that minimize rate shock, such as spreading rate increases over multiple years. ORA also supported legislation to allow small water companies access to Prop 50 bond funds, and is working with the Department of Health Services to explore the possibility of regionalizing water treatment facilities where the capital and operating costs of the treatment facility can be shared among adjoining regulated large and small water utilities.

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[1] See the "Public Water System Investment and Consolidation Act of 1997, P.U. Codes 2718, et seq.

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES
P.O. Box 419064, Rancho Cordova, CA 95741-9064

April 13, 2005

The Honorable Don Perata, Chairman
Senate Rules Committee
Attention: Ms. Nettie Sabelhaus
State Capitol, Room 420
Sacramento, CA 95814

SUBJECT: CONFIRMATION HEARING

Dear Senator Perata:

Thank you for your consideration of my appointment to serve as Director of the Department of Child Support Services and for the opportunity to provide responses to the following questions from your letter of March 21, 2005. I look forward to meeting with you and the other members of the Senate Rules Committee as you consider confirmation of my appointment.

1. *What are your goals and objectives as director of the Department of Child Support Services? What do you hope to accomplish during your tenure? How will your experience prior to being appointed director help you accomplish these goals?*

My goal as director of the Department of Child Support Services is to provide for the financial and medical security of California's children and to assist families in becoming self-sufficient through the delivery of quality child support establishment, collection and distribution services.

My objectives are to:

- Increase the number of child support orders established based on accurate data and improve collections on current support and on arrears owed.
- Complete implementation of the statewide system to expeditiously track, collect and disburse child support to families.
- Improve cost-effectiveness in the program by driving increased collections and managing program costs.
- Improve county performance by working collaboratively with the counties to drive improvements in the program and accountability for county performance.
- Achieve full federal compliance in the program.

APR 1 3 2005

I am confident I have the experience to accomplish these goals. First, my experience with criminal courts and the legal process provide me with an in-depth understanding of the child support system and California's judicial-based program model. Second, my knowledge and experience in community care licensing and children's services provide me insight into the needs of California's children and families, since many children receiving child support in California also receive services from these programs. Finally, my experience as an Administrative Law Judge provides me the understanding of federal and state laws and regulations governing the child support program. This experience also gives me the opportunity to see programmatic issues and problems from the perspective of program clients and local child support agencies.

2. *What are the major milestones for the CCSAS Project for the next 12 months and, is DCSS, the Franchise Tax Board and the vendor on schedule to meet those milestones? Do you have any concerns that you will not be able to meet the September 2006 date to request certification from the federal government?*

All major milestones have been met to date and activities are underway to accomplish the remaining milestones on time and within budget. I personally met with the leadership and technical experts from the federal Office of Child Support Enforcement and presented our project plan, schedule, approach and timeframes. The federal staff expressed confidence in the project and verbally stated that for the first time, California is properly focused on implementing a certifiable statewide child support automation system. The remaining key milestones are:

- July 2005 – All counties moves from their old automated systems to one of two consortium systems that will qualify California for federal certification.
- September 2005 – The single statewide child support database is implemented, allowing counties a statewide view of all child support cases.
- October 2005 – The single statewide system for receipt and disbursement of child support payments (known as the State Disbursement Unit) begins its staged implementation.
- May 2006 – Statewide payment allocations begin in accordance with federal requirements. This means all payments will be processed centrally at the state level, rather than in the individual local child support agencies.
- September 2006 – California submits a request for federal certification of the automated child support system. This will immediately suspend federal child support penalties, pending final certification. Additionally, this will qualify California for a refund of 90 percent ($201 million) of the 2006 penalty once federal certification is received.

3. *Local involvement is an important element in CCSAS development; however, the State must also ensure that project milestones are achieved on a timely basis and within budgeted resources. How is the DCSS balancing State and local needs in the development of the CCSAS project?*

The California Child Support Directors Association and the local child support agencies are close partners in the development and implementation of the Child Support Automation Project. They have been instrumental in defining the system requirements, designing the system, testing the system and in planning and executing the implementation. Additionally, the department and the locals have worked in partnership to address certification issues and prepare for the operational impact of the child support automation system. We have several county line staff and program experts dedicated full-time to designing and testing the system. Most recently, representatives from several counties participated in the second review of the system design to provide input from a users' perspective. The counties are also developing the training modules that will be used to train county staff on system operations. Additional outreach and orientation presentations have been developed to provide counties the opportunity to provide input and ask implementation questions. In addition, processes have been implemented that provide for county issue identification and resolution. Collaborative efforts such as these underscore the department's recognition of the integral role of our county partners. It is important to note, however, that the department is ultimately responsible and accountable for balancing state and local needs, establishing program and policy direction and ensuring the success of the project.

4. *How much has the State already incurred in federal penalties, how much will the State incur by the time we seek certification and what are the costs of CCSAS and the SDU (both contract costs and State operations costs)? Is there any way to reduce the penalties California is expected to incur?*

- Since Federal Fiscal Year (FFY) 1998, California has paid $754 million in penalties.
- With the September 2006 request for certification, California will have incurred $1.2 billion, of which $201 million (90 percent of the 2006 penalty) will be reimbursed after certification.
- Total cost for the automated system over 10 years, excluding the penalty, will be $1.5 billion, which includes $1.3 billion for the child support enforcement component and $217 million for the disbursement function.
- By securing a deferral of the FFY 2006 penalty, the Schwarzenegger Administration was successful in minimizing the impact of the federal penalty on the State FY 2005/06 budget.

One way to reduce the penalties is to change federal law. Current federal law does not allow for a waiver or special consideration for any state making positive progress on child support automation. This means under current law, California must pay the entire FFY 2006 penalty of $223 million, obtain system certification, and then have 90 percent of the penalty reimbursed.

We have developed language that would allow a state to pay only 10 percent of the penalty in the final year of system development. We are working with the Governor's Washington, DC office and the House Committee on Ways and Means to include the language into the Temporary Aid for Needy Families (TANF) reauthorization bill. If this language were to be adopted, then California would be obligated to pay only $22.3 million of the FFY 2006 penalty as the final year penalty payment, assuming California's child support automation system receives full certification.

5. *The federal government has cautioned California that it will be treated the same as all other states. It appears that, in order to be relieved from the automation or SDU penalties, other states may not have been held to the requirement that the SDU be operational in 100 percent of the cases. Has DCSS fully explored how Texas and other states were treated to ensure that DCSS cannot in fact credibly go ahead with a request for certification in September 2005?*

I personally met with the federal Office of Child Support Enforcement (OCSE) regarding this issue. OCSE clarified that Texas and Michigan were not exempted from having a fully functional Statewide Disbursement Unit. The two states did receive an exemption related to whether funds would be disbursed centrally or at the local level. However, the exemptions received by Texas and Michigan would not help California to gain certification of our system (and relief from federal penalties) any earlier than September 2006. OCSE is in the process of developing a formal written response to our inquiries. In order to further validate that we are receiving equal treatment, we are asking Texas and Michigan for copies of their certification applications so we can independently validate the federal response.

6. *What steps are DCSS and/or the administration taking to try to secure some penalty relief? Is DCSS pursuing legislation similar to the 2002 Matsui legislation that would have reduced the penalty and allowed reinvestment of the penalty dollars in the child support program?*

The Schwarzenegger Administration has taken steps to minimize the State General Fund impact of the federal penalty. Most recently, California received federal approval to defer the FFY 2006 penalty, from paying quarterly beginning July 15, 2005, to paying the entire penalty on September 15, 2006. By doing so, the fiscal impact of having to pay two years of the federal penalty has been reduced.

As indicated earlier, I am working with the Governor's Washington DC office and key Congressional staff on a federal legislative proposal that would provide penalty relief to California. The proposed language would require California to pay only 10 percent of the federal penalty in the final year of system development. We would be subject to the remaining 90 percent penalty only if our system failed to gain federal certification.

The 2002 Matsui Bill proposed legislation that would have fixed the penalty payment at a specific amount each year, and allowed states to either pay the penalty or reinvest the funds into the child support program. Although we would have supported the legislation, it failed to gain sufficient Congressional support. This may have been due to the proposed reinvestment of penalty dollars, which would represent an expenditure

in the federal budget. Given the federal budget situation, anything that represents an increase in expenditures would be unlikely to gain support. Our proposal would not be reflected as an expenditure, but rather as reduced federal revenues. This may make it somewhat more likely to gain support.

7. *California's cost-effectiveness is only $2.12, far below the national average of $4.33. Why is the State's cost-effectiveness so far below the national average? What immediate and longer term steps will you take to improve California's performance on this critical measure?*

California's performance on cost-effectiveness is below that of other states and we need to improve in this area. This is one of the federal performance measures that present the greatest challenges to California. On the one hand, there are legitimate reasons why our cost-effectiveness is low. For example, California is one of two states that have not implemented a certified statewide automation system. Therefore, California is simultaneously paying the costs of developing a new statewide system, the cost of developing the new State Disbursement Unit, the costs of the counties' old automated systems, and the cost of transitioning the counties from their old systems to one of the two consortia systems that will support federal certification. Consequently, our costs for automation are much higher than those of other states at this time.

Another factor that contributes to the imbalance between states is the size of California and the program model. Most other states operate and centralize their child support programs at the state level. California's child support program is operated by counties, with oversight and leadership by the state.

Many states operate their program through a model in which child support orders are established and enforced administratively. California's judicial model is based on the existing family court administrative procedures dating to 1975, when the child support program was first implemented. This means that in California, support orders are established and modified through the courts. This adds costs such as attorneys, legal support staff, judges, commissioners, process servers and courtroom costs to California's program.

Nevertheless, despite these constraints, California can improve its cost-effectiveness. Funding for the local child support agencies has been held level for the last three years, requiring the focus on leveraging best value from the resources available to administer the program. To manage costs and to further identify issues that play a key role in California's cost-effectiveness, we are in the process of contracting for an independent study of this issue targeted for completion in January 2006.

The final factor that impacts cost-effectiveness is child support collections. Implementation of California's child support automation system will relieve us from paying the costs of the old systems that will improve the overall ratio of cost to collections. Moreover, the federal Office of Child Support Enforcement has confirmed that the common experience from states implementing a statewide child support automation system is increased performance and improved cost-effectiveness, after a defined implementation period. Therefore, California will see a short-term decline in

performance and cost-effectiveness, but will, in the long-term, experience an increase in collections and cost efficiencies in administrating the child support program.

8. *California's statewide performance is only as good as the performance of the individual county child support programs. Shortly after your appointment, you announced county performance targets for federal fiscal year 2005 only minimally higher than the 2004 targets. If counties meet the 2005 targets, can you achieve the performance goals set forth in your strategic plan for 2005? Why did you reduce the performance targets when California is not meeting the national average in critical measures that ensure maximum dollars reach California's children*?

The 2002-05 Strategic Plan goals were developed by the previous Administration before the local child support agencies experienced a reduction in staff resources and before the department realized the impact that multiple child support and welfare system conversions would have on those very same resources. To be meaningful, performance targets must promote improved performance and be attainable. It is important to note that for the previous two federal fiscal years, the previous Administration lowered local agency targets below those in the strategic plan in consideration of the mitigating circumstances identified above.

Given that the counties have not reached the performance goals set for previous years, it would be unrealistic to assume that the strategic plan goals set in 2002 could be achieved. I believe it is important to establish realistic goals that encourage counties to improve performance while recognizing the fiscal constraints under which they are operating. The performance targets set for 2005 take into account impacts on the local child support agencies that are beyond their control (e.g., automation conversions). Furthermore, as part of the current strategic planning efforts, the department is developing new performance targets in coordination with program stakeholders.

9. *What are your goals for performance levels in future years? How will you work with local child support agencies (LCSAs) to make sure they reach their targets? What action will be taken with regard to LCSAs that do not meet their performance targets*?

The department is in the process of developing performance goals for the child support program that will be ambitious yet realistic, and that place California in the position of increasing federal incentive dollars. We will continue to closely monitor the progress of the local child support agencies in achieving performance milestones and quickly intervene with technical assistance for poor performing counties. This performance monitoring process is institutionalized through the department's quality assurance performance improvement program and through regional administrators, who oversee the local child support agencies to ensure compliance with all state and federal laws and regulations.

For those local agencies that continue to fail to meet their performance standards after the department's efforts to work with them to improve performance, I will direct the implementation of the three-phase corrective action process outlined in state statute. The process begins with the development of a performance improvement plan prepared

jointly by the department and local agency, requires onsite oversight in the second phase and can ultimately result in the department assuming responsibility for management of the local agency in the third phase. This process is being applied for two poor performing counties. Los Angeles County was placed into Phase I during the previous Administration. San Bernardino was placed into Phase II in 2004.

10. *How much support has been collected as a result of the interim compromise of arrears program (I-COAP)?*

As of March 24, 2005, $2.3 million have been collected in the interim compromise of arrears program. While these collections are lower than the amounts originally estimated for the program, the compromises close out over $11 million in arrears and over 400 cases. No other state has implemented a successful compromise program and the federal government is looking to California as a potential model to address the problem of outstanding arrears. The original estimates were based upon similar programs administered by the Franchise Tax Board, which turned out to be inaccurate performance indicators for a child support compromise program. Further, as originally established, the program was not user-friendly to program participants and was difficult for the locals to administer.

11. *The interim compromise of arrears program (I-COAP) was not optional of the LCSAs. What has DCSS done to ensure compliance with the requirements to conduct this program? What has DCSS done to ensure that LCSAs are appropriately publicizing the availability of this program?*

To ensure compliance in the program, the department issued policy directives, and worked with the local child support agencies, providing on-site training and conducting presentations at the Child Support Directors Association's quarterly meetings. A total of 42 local agencies are participating in the interim compromise program; six of these agencies are also participating in the pilot compromise of arrears program.

With regard to outreach, the department provided each local child support agency with a list of obligors potentially eligible and the local agencies conducted targeted outreach, focused on mailing out letters and applications. Additionally, the interim compromise program served as a vehicle that identified barriers to participation in the program for both clients and the local child support agencies. This led to the retooling effort of the program described below.

12. *The statewide roll out of the complete compromise of arrears program was delayed to allow what has been characterized as "retooling" of the program to address concerns of the LCSAs. When will the program be implemented? How is the program being changed? How is DCSS monitoring and addressing LCSA concerns with the program?*

The statewide rollout of the automated Compromise of Arrears Program is scheduled for July 1, 2005. I convened a workgroup of both state staff and representatives from the local child support agencies to review the program, identify barriers to participation for both non-custodial parents and local agencies, and identify recommended changes

to make the program more user-friendly. Based on the workgroup's recommendations, the department has modified the program. Specifically, we have made the application process easier, simplified the re-payment options and streamlined the program process at the state and local levels. These changes will make it easier for both the local agencies and non-custodial parents to participate in the program. The department will continue to work with the local agencies to monitor the program's success, track concerns expressed by the local child support agencies and identify and resolve any issues that might impede the success of the program.

13. *Do you believe that enhancing customer service is part of the program's core mission?*

Yes, I firmly believe that delivering first-rate service is central to the mission of the Department of Child Support Services to promote the well-being of children and the self-sufficiency of families. Good customer service is the first way in which both custodial and non-custodial parents gain trust in the child support program. Custodial parents need to see the program consistently and effectively enforcing child support orders and disbursing collections accurately and timely. Non-custodial parents need to see that appropriate modifications of orders or enforcement mechanisms are completed timely and accurately as well. Both groups need to see that any concerns or complaints are responded to timely and effectively. Good customer service in the child support program promotes cooperation from both custodial and non-custodial parents, leading to improved outcomes for the children and families participating in the program.

14. *Do you intend to relax any of the customer service initiatives previously put in place by DCSS? If yes, please detail the changes.*

No. The customer services initiatives previously put into place (the Ombudsperson Program, the Complaint Resolution Process and the State Hearings) provide a critical and needed avenue for customers to resolve their concerns. Further, through the department's regional administrators and the department's Quality Assurance Program we have initiated an effort to identify and promote best practices among the local child support agencies. As we prepare for the operational impact of implementing the statewide automated system, I have a collaborative team of state and local program staff focused on ensuring that we maintain the level of service and program effectiveness as California undergoes transition to the new system.

15. *What percentage of program allocations do you believe is acceptable for LCSAs to devote to administrative overhead? What steps will you take to rein in administrative expenditures, and do you envision any changes to how program dollars are allocated for stronger State oversight of county child support expenditures?*

The accounting practices and reporting of administrative and program costs vary among the local child support agencies. Accordingly, the first step is to identify administrative costs for the child support program. As I mentioned earlier, the fact that we have held funding level for the local child support agencies for the last three years has already provided the opportunity to examine our use of administrative resources and leverage better value from program expenditures. However, it is necessary to delve deeper into local agency administrative and accounting practices. To accomplish this, I will bring together a cross-section of local child support agency directors representing small, medium and large counties, legislative staff, the Department of Finance, and the Legislative Analyst's Office to examine these issues. I have targeted this effort to be completed by January 2006. It is at this point that I can make an informed decision on the appropriate ratio of operational and administrative costs.

In summary, the Senate Rules Committee and the State Legislature can be assured that I will work diligently to achieve the goal of promoting the well-being of children and the self-sufficiency of families. To achieve this, I will: 1) implement the statewide automated system; 2) meet federal program requirements; and 3) improve overall statewide program performance.

I look forward to working with the Legislature on these important issues facing California's families. I welcome further discussion with the Senate Rules Committee hearing during consideration of my nomination to serve as Director of the Department of Child Support Services.

Sincerely,

Greta Wallace

GRETA WALLACE
Director

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June 9, 2005

Ms. Nettie Sabelhaus
Rules Committee Appointments Director
STATE CAPITOL, Room 420
Sacramento, CA 95814

Dear Ms. Sabelhaus:

This letter is in response to questions raised in a letter dated May 27, 2005, signed by Senator Don Perata, in reference to my confirmation hearing scheduled for June 22, 2005.

Let me begin by saying that I am very proud to be considered in this confirmation process, and believe that my background will bring value to the CLO as it strives to protect policyholders and creditors of failed California insurers. My predecessor, Mr. Fred Buck, did an outstanding job closing 27 estates and distributing approximately $1.1 billion to claimants over the past two years. The CLO presently has 27 open Estates with approximately $ 4,291,000,000 under its supervision, as of April 2005.

As evidenced by the recent Department of Finance Report on internal controls of the CLO, the CLO's internal control environment and organizational infrastructure has suffered over the past 6-8 years as a result of frequent changes in management and chief executive officers ("CEOs"). There have been seven CEOs over the past seven years, resulting in an unstable internal control environment.

STATEMENT OF GOALS

1. *Question:* Please provide us with a brief statement of your goals. What do you hope to accomplish during the short-term and the long-term as chief executive officer of the CLO?

   Response: My primary focus is to fulfill the Commissioner's statutory responsibilities relating to rehabilitation and liquidation of troubled insurance organizations and the protection of policyholders and creditors. While there are some very complicated Estates under management of the CLO, the initial focus needs to be on internal controls and the organizational infrastructure. To that end, my short-term and long-term goals focus on internal controls and organizational infrastructure, while being ever mindful of the Commissioner's statutory and fiduciary responsibilities to protect policyholders.

Short-Term Goals

Following is a brief summary of my short-term goals (first 180 days):

- Revisit and update Mission, Vision, Values and Charter statements to ensure that all CLO staff understand and adhere to the objective of protecting policyholders.
- Test behaviors, values and soft skills of executive staff.
- Re-evaluate job profiles of the executive management team.
- Meet with the senior management staff one-on-one.
- Evaluate Strengths, Weaknesses, Threats and Opportunities of the organization.
- Evaluate and modify, if appropriate, the 2005 Business Plan.
- Evaluate and modify, if appropriate, the 2005 administrative expense budget.
- Evaluate and implement monitoring controls/reporting over 2005 Business Plan and operational budgets.
- Profile and recruit chief financial officer.
- Profile internal auditor position.
- Implement monitoring mechanisms over the DOF report on internal controls to ensure that we are meeting the commitments we agreed to.
- Implement "accountability" program at the executive level.
- Implement "key indicators" and monthly reporting.
- Identify and deploy cross-departmental teams on all Estates.

Long-Term Goals

Following is a brief summary of my long-term goals:

- Establish within CLO a well-controlled infrastructure dedicated to the efficient and effective handling of the estates for the benefit of policyholders and creditors.
- Document internal accounting control environment in the Sarbanes/Oxley Section 404 format.
- Satisfactory completion of internal controls review with no "material weaknesses".

- Evaluation and potential implementation of changes to the organization's governance to strengthen the control environment.
- Identification and use of "benchmarks" to measure organizational successes.
- Turn the negative focus (from the outside) into a positive focus.

2. *Question:* The CLO acts on behalf of the insurance commissioner to conserve, rehabilitate or liquidate failed insurance companies licensed under the Insurance Code. You have served in other states administering and rehabilitating financially troubled insurance companies. How have these experiences prepared you for the challenges of becoming chief executive officer of the CLO?

Response: It is difficult to beat "hands-on" experience. With the exception of a few states, California being one, the appointed deputy receiver is a hands-on person that oversees the conservation, rehabilitation or liquidation of a struggling insurer from start to finish. The hands-on experience is invaluable. 80%-90% of liquidations are relatively standard, no matter what the size of the organization.

I have been fortunate to work on a large variety of troubled insurance organizations during my career, including property and casualty, life, accident and health, Blue Cross Plans, Risk Retention Group, crop hail insurer, warranty companies, captive insurers, and a fraternal organization. My broad spectrum of experience working with troubled situations provides me with a comfort level, but it may be my previous experience as a chief executive officer that has best prepared me for the position of chief executive officer of the CLO.

3. *Question:* As of May 31, 2005, the Insurance Commissioner has placed 27 insurance companies in conservation or liquidation. These are administered by the CLO. In the past, you have supervised the handling of a small number of companies. How do you anticipate handling the challenges of overseeing a significantly larger number of companies?

Response: My experience working in public accounting (Ernst & Young) provided me with the foundation for handling multiple, large, complicated engagements simultaneously. When I left Ernst & Young, I was the Engagement Partner on SAFECO, which included life companies, property/casualty companies, investment companies, etc., while at the same time being responsible for numerous other clients.

At the CLO, each Estate is now assigned to a team that is represented by people skilled with the unique disciplines necessary to expedite the liquidation process (such as reinsurance, claims, financial analysis, legal counsel, etc.). My role is to provide oversight to the liquidation process and to see that each team has the right resources to accomplish their goals. My role at the CLO is not much different than the role I played in public accounting and not dissimilar to my prior role as a CEO.

4. *Question:* According to your resume, you served as senior vice president and chief financial officer of the Rocky Mountain Health Corporation in Denver from 1989-1991. Your resume indicates that during that time you facilitated the reorganization of the company's corporate infrastructure, reorganized its finance department and held direct management responsibility for finance, treasury/investments, internal audit, planning and corporate facilities functions.

During the decade of the '90s--primarily after your departure--federal and state agencies took a series of actions against Rocky Mountain Health Corporation. They included a $12 million fine for filing false claims, charges of obstructing a federal audit, penalties for failing to pass on negotiated settlements, a claim the corporation collected $4 million in excessive retirement funds, an FBI investigation of a supposed $1 million Medicare overpayment to a Denver area hospital and other charges of poor handling of Medicare claims.

Can you offer any insight into what may have gone wrong and why? What is your strategy for averting similar problems in the oversight of troubled California insurance agencies?

Response: I was an employee of RMHC from approximately November 1989 to January 1991 (approximately 13-14 months). I left the organization over a conflict in business ethics and values with the CEO, not unlike the issues that the Governor of Colorado cited in his removal of the president and CEO several years later. For example, the Board of Directors at RMHC was compensated at an amount greater than the Board of John Hancock Life Insurance Company and held their meetings in expensive and exotic locations at the expense of the subscribers (policyholders). The organization was unwilling to adopt a code of ethical conduct.

RMHC was a third-party processor of Medicare claims for a defined geographical area. I believe the issues that you cite above relate to the Medicare business and transpired after I left the organization. It is difficult for me to respond to your question, "What may have gone wrong and why?" without giving you a speculative answer. However, what I experienced at RMHC was the "tone at the top" of the organization was questionable. It allowed for possible inappropriate acts which is apparently what happened.

The possible common theme is internal controls---the control environment and governance. Under my watch, management will convey the message that integrity and ethical values cannot be compromised. Management must continually demonstrate, through words and actions, a commitment to the highest ethical standards.

GENERAL QUESTIONS REGARDING THE CLO

5. *Question:* Please indicate the current total number of estates of conserved or liquidated insurers subject to the oversight of the CLO, the current estimated value of assets under CLO's management, and the CLO's most recent value of open estates from 2000 to present.

Response: There are currently 26 conserved or liquidated Estates and one Estate under administrative supervision subject to the oversight of the CLO.

Ms. Nettie Sabelhouse
June 9, 2005
Page Six

Year	Open Estates	Seized Estates	Estates Closed	**Value Open Estates
2000	55	8	4	$2,325,738,495
2001	54	3	5	$3,135,454,437
2002	54	5	5	$3,003,285,300
2003	44+2*	3	11	$4,514,598,682
2004	29+2*	0	16	$4,398,601,642
2005 (4/30/05)	26+1*	0	3	$4,291,523,069

* Under Administrative Supervision

** The figures shown above represent the total assets for these Estates as of each year-end, exclusive of liabilities to claimants, etc. **Most of these amounts represent non-cash assets such as reinsurance recoverables yet to be converted to into cash, which will then be available for distribution to claimants.**

6. *Question:* Please identify for the committee the dates by which you estimate currently managed estates are expected to be closed.

Response:

Estate	Estimated Closing Date
Alistar Insurance Co.	10/06
Citation General Ins. Co.	02/07
Executive Life Insurance Co.	tbd
First Calif. P&C Ins. Co.	11/05
Fremont Indemnity Co.	tbd
Frontier Pacific Ins. Co.	10/06
Golden Eagle Insurance Co.	02/07
Great States Insurance Co.	02/07
HIH America Comp. & Liability	02/07
Mission Insurance Co.	tbd
Mission National Insurance Co.	tbd
National Automobile & Casualty	03/06
Pacific National Insurance Co.	07/07
Paula Insurance Co.	09/06
Premier Alliance Insurance Co.	11/05
S&H Insurance Co.	06/05
Sable Insurance Co.	09/06
Superior National Insurance Co.	tbd
California Compensation Ins. Co.	tbd

Combined Benefits Ins. Co.	tbd
Commercial Compensation Casualty	tbd
Superior Pacific Casualty	tbd
Western Employers Ins. Co. of America	12/06
Western Employers Ins. Co.	12/06
Western Growers Ins. Co.	06/06
Western International Ins. Co.	06/06

Please note that the "Estimated Closing Dates" indicated above were established in the 2005 Business Plan. We are currently updating the Business Plan, which may result in a change to the estimated closing dates. Also, please note that the actual closing dates are not always under our control as we are dependent on certain events that must take place to allow us to close an estate.

RECENT REPORT BY THE DEPARTMENT OF FINANCE, OFFICE OF STATE AUDITS AND EVALUATIONS

On May 13th, the Department of Finance (DOF), Office of State Audits and Evaluations, released its final report entitled *Conservation and Liquidation Office 2004 Internal Control*. It focused on the CLO's "internal control over financial reporting and safeguarding estate assets as of July 21, 2004 and as of March 31, 2003 for information technology" controls. The objectives of the review were to "(1) determine whether the CLO's internal control provides accurate financial reporting and effective control over receipts, expenditures, assets, and liabilities; (2) assess programmatic controls over the CLO's financing, lending and insurance activities; and (3) report observations and develop recommendations for improving the CLO's internal control."

The report noted certain material weaknesses and stated, "The CLO does not maintain sufficient controls over its administration, budget, purchasing, fixed assets, information technology, and receivables functions. Failure to maintain sufficient controls could aversely affect the CLO's ability to record, process, summarize, and report financial data and safeguard estate's assets against loss from theft, unauthorized use or disposition." The report further noted that "when corrected, these controls will reduce the CLO's exposure to risk of errors, irregularities, and material misstatements in the financial statements."

7. *Question:* Do you agree with DOF's assessment of your office?

Response: Please note that the Internal Control Review performed by the DOF, referenced above, was a result of a request by my predecessor under the direction of Commissioner Garamendi to evaluate the CLO.

The findings contained in the DOF report indicate areas of potentially serious weaknesses within the CLO. I assure you that I take the report seriously and have instructed CLO staff to address the specific findings quickly, which is being done. In addition, we are planning to implement, as soon as possible, a comprehensive review of internal controls in the Sarbanes/Oxley format.

On a more positive note, during my limited time at the CLO thus far, I have not found any instances of internal control failures which have resulted in significant loss to the CLO or any of the CLO Estates. Nor have I been advised of any such finding during discussions with our past outside auditors, PriceWaterhouseCoopers and the Department of Finance.

A systemic problem at the CLO is the constant changes at the CEO level (seven CEOs in seven years) and executive management level of the organization. The continuous changes have resulted in a lack of consistent leadership at the executive level.

8. *Question:* Is the CLO's management team now in place? Please explain the reorganization efforts referenced in the DOF report that have taken place since the DOF completed its fieldwork in July 2004.

Response: The executive management is now in place (see Attachment I, CLO Executive Staff organizational chart). The following highlights these major changes:

- A new Chief Financial Officer ("CFO") with both public accounting and private industry experience was hired, effective May 9, 2005. This person brings broad experience to strengthen the internal control environment and internal financial reporting.

- A Chief Operations Officer ("COO") position was created and staffed to combine the management of information technology, Claims and Administration. The purpose of the change was to streamline the operation and improve communications and data flow.

- Estate teams have been developed, with each functional area having a representative on each team. In the past, the functional areas (Estate Trust, Finance, Claims, Reinsurance and I.T. and legal counsel) operated relatively independently. The purpose of establishing teams is to improve communications, controls, financial reporting and perhaps more importantly, accountabilities and responsibilities.

- We are now evaluating personnel in the Finance and Estate Trust areas at the next level down.

9. *Question:* Have you identified any deficiencies that need immediate correction? If so, please explain these deficiencies and how you have addressed or intend to address them.

Response: The answer to this question is a difficult to articulate. The most urgent issue that I faced when I arrived was the DOF examination report. The report has or is being addressed in the following manner:

1. The report was reviewed by the applicable operating areas for accuracy of the comments. The CLO developed a response to each of the comments and a timeline to resolve the weaknesses, if appropriate.

2. A master work plan, identifying each of the weaknesses in the DOF report, was developed.

3. The areas identified in the DOF report posing the highest risk to the estates are being addressed first.

4. Senior management will meet regularly to review the status of the work plan.

The most important issue associated with the DOF report is "what caused" these weaknesses to occur? The answer to that question goes back to developing a "controlled environment" to mitigate future problems.

The second concern was to strengthen the leadership over the Financial Department. I believe we are very fortunate to have the skill base of our new CFO, Ray Minehan.

The third concern was to knock down the walls between functional departments to make management of the Estates more efficient and effective. We are doing this primarily through the team approach I addressed earlier in this response.

The fourth area of concern is planning, budgeting, interim reporting and accountabilities. As listed in my short-term goals under Number 1 of this response, my focus will be to implement controls and infrastructure where needed.

10. *Question:* The DOF report covered the time period up to July 21, 2004, for review of the CLO's internal control over financial reporting and safeguarding estate assets, and the CLO's responses to the report were dated March 30, 2005. As a result, the report and responses do not cover efforts the CLO has made after these dates to reform the organization. In your response letter to the DOF report, you indicated that the CLO has "developed a work plan identifying each of the recommendations, who will be responsible for the timely completion of the task and a time matrix." Please help the Committee understand your plans for the organization by providing a summary of this work plan. Please also provide a status report regarding the changes that you are making to respond to the issues raised by the DOF report as well as a timetable for when additional changes will be made.

Response: Attachment II is a copy of the work plan which provides an update on which tasks have been completed and the targeted time period to complete the remaining tasks.

The work plan addresses each of the DOF findings and recommendations, and establishes the specific tasks being undertaken to implement those recommendations or to address

those findings. The common goal of each item in the work plan is to establish the controlled infrastructure necessary for CLO to do its job correctly and efficiently.

11. *Question:* Will additional reviews of the CLO's operations be performed by the DOF, Office of State Audits and Evaluations, or any other independent auditor? Do you know the timeframe for such reviews?

Response: On May 24, 2005, Ray Minehan, CFO, Regina Alava, VP-Finance and I met with representatives of the DOF to discuss the next step and future examinations. During this meeting, we requested that the DOF come back to the CLO and review the progress that is being made to resolve the examination findings in the fall of 2005. A follow-up planning meeting will be held with the DOF later this month to lay out the focus of the 2005 examination.

What may be the most powerful internal control "fix" that we could do is to implement a control review consistent with Section 404 of Sarbanes/Oxley. Although Sarbanes/Oxley is only required for public companies, we are in the planning phase of how to implement it at the CLO. Once the documentation has been completed, we will request that the controls be independently audited.

If you have any questions or need additional information, please let me know. I look forward to appearing before the Rules Committee on June 22nd to answer any and all questions that the Committee members may have.

Sincerely,

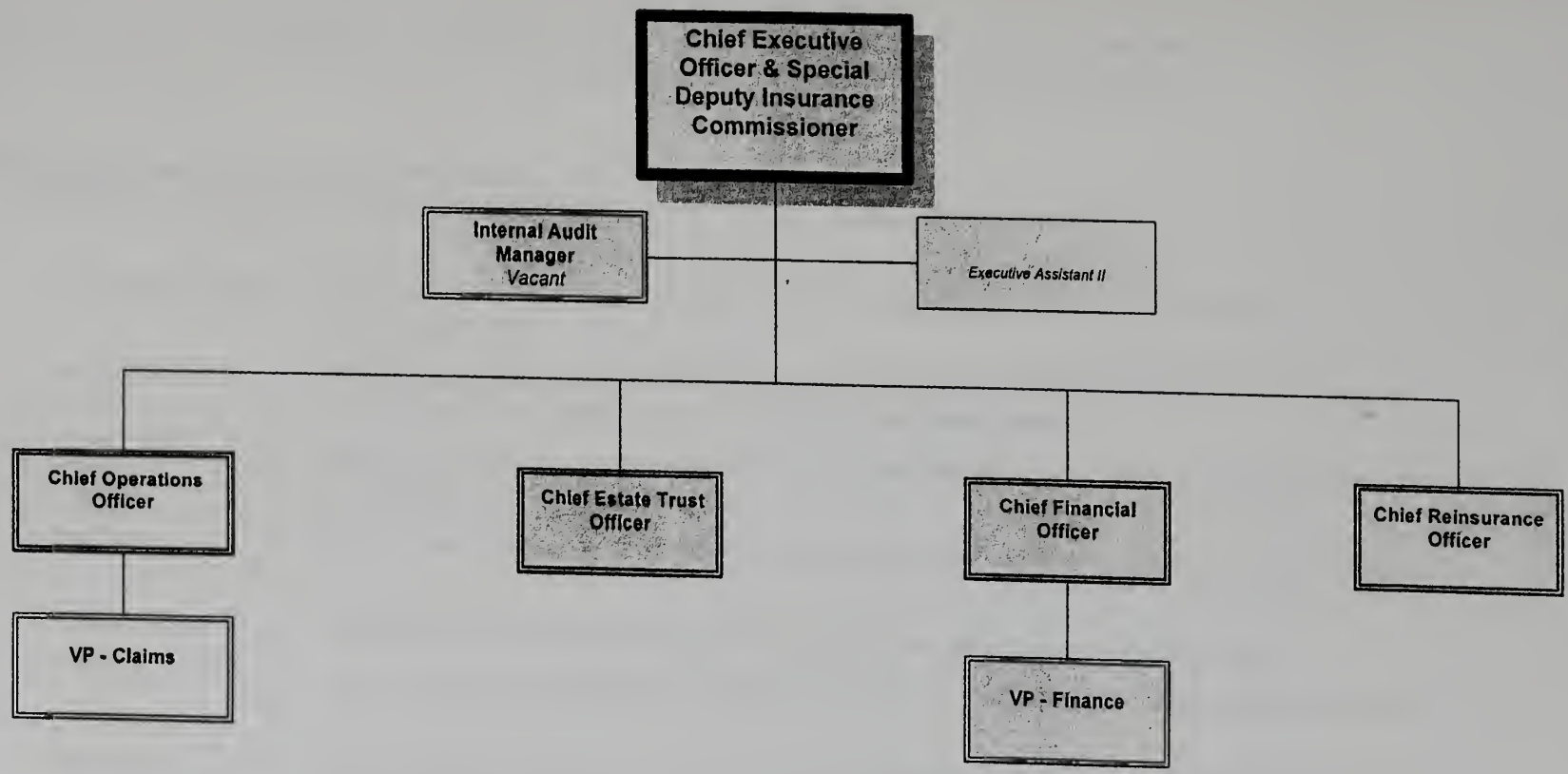
David E. Wilson
Special Deputy Insurance Commissioner

DEW:plt
Attachments

cc: Rick Baum, Department of Insurance

Conservation & Liquidation Office

Executive



rev. 12/19/03, 5/04, 7/04, 9/04, 2/05, 3/05, 5/05

Notes to 2004 Internal Control Response Matrix

1) This report is intended to be used in conjunction with the following document:
An Internal Control Review prepared by the Office of State Audits and Evaluations, Department of Finance, July 2004
The reader should refer to the actual report to understand how this matrix relates to the DOF's findings.

2) The columns in the matrix are described below:

Task #	This is an internal reference number for ease of task identification.
Final Report Page #	This number corresponds to the page number referencing the Department of Finance recommendation.
Description	The task description paraphrases the CLO's response. The reader should refer to the actual report to understand the condition, control environment and response task.
Start Date	This is an estimated start date which the CLO began considering and working toward resolution of the identified task.
End Date	This is an estimated date of completion where the CLO will finish or implement an ongoing process.
Responsibility	This identifies the indivdual or team responsible for task resolution and follow-through.
In Process	An "X" in this box indicates that the responsible party has initiated activity toward task completion.
Completed	An "X" in this box indicates the task has been completed and completion is documented by sign-off of the responsible party.
Ongoing	An "X" in this box indicates that a task may be completed and require ongoing monitoring/action at the CLO.

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
	6	*FINDING I- Section 1 - A. Insufficient Documentation of Policies & Procedures*						
	6	**RECOMMENDATION: Ensure all operational processes & procedures are appropriately documented, revised periodically, & maintained in a centralized manual - PAGE 6**						
1	6	Process Analyst was hired on Nov 2003 to coordinate the enforcement of standards Provide version control, gain approvals and publish policies and procedures for the entire organization.	11/01/03	11/30/03	Process Analyst		x	
2	6	CLO policies & procedures filter through for adherence to the CLO's document control standards and filed in a central location. Policy and procedure kept in this file will be properly reviewed, approved and identified for version control	11/01/03	ongoing	Process Analyst		x	x
3	6	Developed global Documents Control Policies to control format, content and approval levels of managing the policy & procedures.	01/03/05	02/28/05	Process Analyst		x	
4	6	Approve global document, in preparation for organization-wide effort to update existing procedures developed by Process Analyst.	01/03/05	02/28/05	Executive Team		x	
5	6	Track any revision to policies & procedures (revised or obsolete procedures will be maintained in archival files).	01/03/05	ongoing	Process Analyst		x	x
6	6	Update the Claims Department Policies & Procedures.	01/03/05	06/30/05	Claims Department	x		
7	6	Update the Estate Trust Policy and Procedures.	01/03/05	12/30/05	ETO Department	x		
8	6	Update seizure policies and procedures.	01/03/05	12/30/05	ETO Department	x		
9	6	Update Accounting Policies & Procedures	02/02/05	12/30/05	Accounting Department	x		
10	6	Write Supervisor's Handbook.	03/01/05	12/30/05	HR Department	x		
11	6	Update Human Resource Policies & Procedures governing payroll and personnel functions and reflect current law & practices.	01/03/05	12/30/05	HR Department	x		
12	6	Update Administration Policies & Procedures	03/01/05	12/30/05	Administration Department	x		
13	6	Write purchasing and fixed asset procedures	01/03/05	07/01/05	Administration Department	x		
14	6	Update IT Policies & Procedures	03/01/05	12/30/05	IT Department	x		
15	6	Address the items noted in Finding IVA in Policies and Procedures.	12/30/05	12/30/05	IT Department	x		
16	6	Updating Reinsurance Policies & Procedures.	03/01/05	12/01/05	Reinsurance Department	x		

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
	8	**RECOMMENDATION: Define & document the CLO's interpretation of the modified-cash basis of accounting. Ensure that accounts selected for accrual are identified and policies consistently followed.-PAGE 8**						
17	8	Define CLO's interpretation of modified-cash/liquidation accounting and identify accounts selected for accrual.	02/01/05	08/31/05	Accounting Department	x		
	9	***FINDING IIA: Weak Accounting Practices***						
	9	**A. Weaknesses in Accounting for Salvage & Subrogation Recoverable**						
	9	**RECOMMENDATION: Establish salvage & subrogation accounts receivables for the subrogation recoverable current being pursued. Ensure the active collection of receivables outstanding.- PAGE 9**						
18	9	Produce a monthly summary report of all traditional subrogation results on an estate basis.	01/03/05	12/30/05	Subro Sr Claims Analyst		x	
19	9	Receive a copy of subrogation report on a monthly basis	01/03/05	12/30/05	Accounting Department		x	
20	9	Review the report & reconcile it to the balances on the general ledger monthly	05/31/05	05/31/05	Accounting Department		x	
21	9	Any items on the general ledger not listed on Salvage-Subro report, identify, research and reconcile.	03/31/05	07/29/05	Financial Analyst	x		
22	9	Recommend Salvage & Subro balances for write-off.	07/29/05	08/31/05	Claims Officer	x		
23	9	Recommend Salvage & Subro balances to be assigned to collection.	01/03/05	08/31/05	Claims Officer			
24	9	Track the annuity payments received for Mission estate balance	01/03/05	08/31/05	Accounting Department	x		
25	9	Annuity payments received for Mission estate will be advise on an individual file basis as commutation settlements are achieved & when to expect funds to be received.	10/31/05	10/31/05	Claims Department			
26	9	Any collections against the original annuity balance will be booked as they are received. Final resolutions of these accounts will occur October 2005 to coincide with closure of Mission entities	10/03/05	10/31/05	Accounting Department			
	11	**B. Improper Accounting for Receivables**						

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
	11	**RECOMMENDATION: Ensure Collections are appropriately reviewed & posted to the proper account upon receipt. Only monies received for established receivables should be posted to the receivables accounts.- PAGE 11**						
27	11	Regularly review cash receipts on-line by inquiring into the daily check log spreadsheet on the CLO's shared directory.	01/03/05	ongoing	Sr Claims Analyst,Premium Collector	x		x
28	11	Reclassifications from the suspense account to a receivable or revenue account will occur more frequently, on a monthly basis, starting September 2005, when accounting receives both the Subrogation & Premium collection reports from Claims	09/01/05	10/03/05	Accounting Department,Financial Analyst			
29	11	Record only the summary-level information provided by the Claims Department and will do so by reconciling to the Claims Department reports discussed in the finding above.	07/01/05	08/31/05	Accounting Department, Claims Officer, Premium Collections	x		
	12	**C. Inconsistent Establishment of Allowance for Uncollectible Receivables Accounts**						
	12	**RECOMMENDATION: Establish corresponding allowance for uncollectible receivables accounts for all types of receivables established. Ensure amounts deemed uncollectible are posted to the appropriate account.- PAGE 12**						
30	12	Ensure current receivables are recorded at net realizable value	01/03/05	08/31/05	Accounting Department	x		
31	12	Set allowance for legacy receivables.	01/03/05	08/31/05	Accounting Department	x		
32	12	Any items determined to be uncollectible items are recommended to management for write-off	01/03/05	ongoing	Chief Financial Officer	x		
33	12	Write policies and procedures for both current and legacy receivables.	05/31/05	12/30/05	Accounting Department	x		
	14	**D. Weaknesses in Monitoring & Collecting Outstanding Receivables**						
34	14	**RECOMMENDATION 1: Periodically review & analyze outstanding receivables to determine collectibility.- PAGE 14**						
35	14	Ensure review & analysis of the collectibility of receivables according to the procedures for their functions.	01/03/05	09/30/05	Reinsurance Department,Claims Department,Accounting Department	x		
36	14	Record all summary information to the general ledger	01/03/05	09/30/05	Accounting Department	x		

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
	14	**RECOMMENDATION 2 : Ensure prompt & consistent application of collection actions on delinquent receivables & unclaimed property due to the estates.-PAGE 14**						
37	14	Strengthen the procedure over tracking any unclaimed property listed with the State Controllers Office (SCO)	05/31/05	10/31/05	Accounting Department			
38	14	Determine the cost-benefit of pursuing these based on amount. This evaluation will be completed for all open estates & incorporated into the other receivable listing maintained.	01/03/05	10/31/05	Accounting Department	x		
39	14	Ensure that policies & procedures relating to Reinsurance, Claims & Accounting receivables set out collection guidelines & are consistent with the procedures outlined in the CLO's responses to the 2004-I C Report & the 2002 Agreed-Upon Procedures Report	09/30/05	10/31/05	Process Analyst			
	15	**E. Improper Policy over Processing of Assumed Billings**						
	15	**RECOMMENDATION: Ensure assumed reinsurance is recorded within the CLO's general ledger system upon receipt of the billings.-PAGE 15**						
40	15	Inventory and control Class 7 Reinsurance claims.	01/03/05	ongoing	Reinsurance Department	x		
41	15	Write policy related to statement, "Recording of ceding company liabilities & the adjudication of the related proofs of claim will only be undertaken in situations where it is apparent that a distribution to Class 7 claimants is probable".	07/01/05	09/15/05	Reinsurance Department			
	16	**F. No Evaluation of Reinsurance Reserves after Conservation**						
	16	**RECOMMENDATION: NONE - PAGE 16**						
42	16	Develop and implement new reinsurance processing system (GOLD) that is modeled after the Mission reinsurance processing system	01/03/05	07/29/05	IT Department	x		
43	16	Write policy related to Reinsurance reserves.	01/03/05	09/15/05	Reinsurance Department	x		
	17	**G. Inadequate Purchases Receiving & Payment Controls**						
	17	**RECOMMENDATION 1: Ensure receiving reports are maintained for all purchases.-PAGE 17**						
44	17	Implement a new process for receiving items to include the redesign of the online Purchase Order(PO) form.	01/03/05	06/30/05	IT Department	x		
	18	**RECOMMENATION 2: Ensure partial deliveries are documented on the receiving reports and purchase orders.-PAGE 18**						

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
45	18	Update any partial receipts or variations to the order in the P.O. System.	06/30/05	ongoing	Administration Department			
	18	**RECOMMENDATION 3: Ensure copies of the purchase order and receiving reports are forwarded to the accounts payable unit with the invoice for payment.-PAGE 18**						
46	18	The receiving person in the Administration Department will print the PO and forward the copy along with the attached packing slip(s) to the Accounts Payable area.	07/01/05	ongoing	Administration Department, Accounts Payable			
	18	**RECOMMENDATION 4: Develop procedures to ensure that the billing invoice is compared with the PO and receiving report prior to payment.-PAGE 18**						
47	18	Design policies and procedures for the purchasing cycle with internal controls and incorporate the recommendations identified by the auditors in a written document.	01/03/05	09/30/05	Administration Department, IT Department, Accounting Manager	x		
48	18	Compare POs to billed invoices and receiving reports prior to forwarding to the approver for signature. Copy these three documents and attach to the payment documents.	06/30/05	ongoing	Accounts Payable			
49	18	Write procedures for the purchasing cycle improvements	06/30/05	09/30/05	Administration Department, IT Department, Accounting Manager	x		
	18	**RECOMMENDATION 5: Develop procedures to ensure that all supporting documentation such as the billing invoice, PO, and receiving report is retained together.-PAGE 18**						
50	18	Attach copies of the PO, receiving report and approved invoice to the payment documents.	07/01/05	ongoing	Accounts Payable			
51	18	Write procedures in A/P area related to new PO attaching process.	07/01/05	09/01/05	Accounts Payable			
	19	**H. No Periodic Review of Open Purchase Orders**						
	19	**RECOMMENDATION: Ensure the open purchase order files are periodically reviewed and long outstanding purchase orders are researched and investigated.-PAGE 19**						
52	19	Review, by the receiving person, open purchase orders on a monthly basis.	07/01/05	ongoing	Receiving Person, Admin Supervisor	x		
53	19	Plan several enhancements to enable reporting on purchase orders, such as archiving and emailing.	06/01/05	06/15/05	IT Department	x		

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
54	19	Review open purchase orders monthly and research and investigate outstanding purchase orders.	07/01/05	07/01/05	Admin Supervisor			
	20	**I. Inconsistent Research & Review of Outstanding Checks**						
	20	**RECOMMENDATION 1: Develop policies and procedures governing the identification and research of long outstanding checks.-PAGE 20**						
55	20	Research stale checks	01/03/05	ongoing	Accounts Payable		x	x
56	20	Research each outstanding check in the Accounts Payable bank account and either reissued or voided in the Accounts Payable subsidiary module.	01/03/05	ongoing	Accounts Payable		x	x
57	20	Implement monthly review process to identify stale-dated accounts payable checks	01/03/05	ongoing	Accounts Payable		x	x
58	20	Write Outstanding Check procedures to be incorporated into the departmental policies and procedures.	01/03/05	12/30/05	Accounts Payable	x		
59	20	Update outstanding check list each time a check is reissued to limit the possibility of duplicate reissues	01/03/05	ongoing	Accounting Department		x	x
60	20	Enter proper journal entries with each batch of transactions to record the void and reissue activity in the general ledger and to reconcile to the outstanding check list on a monthly basis.	01/03/05	ongoing	Investment Supervisor	x		
61	20	Remit outstanding distribution checks to the State Controller's Office after a final reconciliation.	01/03/05	ongoing	Investment Supervisor	x		
	21	**RECOMMENDATION 2: Ensure checks outstanding beyond their period of negotiability are promptly cancelled in accordance with CLO's policies&/or identified&remitted as unclaimed property, in accordance w/CA unclaimed property regulations.-PAGE 21**						
	21	Research outstanding checks in the Accounts Payable bank account on a monthly basis. Any un-cashed checks 6 months or older will be researched. DUPLICATE - Task 56					n/a dupe	
	21	Void check through the A/P system if research determines the check should be voided. DUPLICATE - Task 56					n/a dupe	
	21	Reissue or escheat if the check is determined to be outstanding.DUPLICATE - Task 61					n/a dupe	
	21	Escheat un-cashed distribution checks upon closure of the estate. DUPLICATE-Task 61					n/a dupe	
	21	Update the Accounting policies and procedures discussed in Finding I.- Task 58					n/a dupe	

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
	22	**J. Failure to Establish a Plan of Correction for Excessive Sick Leave Balances**						
	22	**RECOMMENDATION: Implement a plan of correction to have the employee reimburse CLO for the excessive sick leave taken.-PAGE 22**						
62	22	Discontinued the sick leave program.	01/03/05	02/28/05	CLO Management		x	
63	22	Purged the sick time negative balances totaling $303 from the report which tracks the defunct sick leave balances.	03/15/05	03/15/05	HR Department		x	
	24	**K. Inadequate Monitoring of Fixed Assets**						
	24	**RECOMMENDATION 1: Maintain a centralized subsidiary property ledger for all CLO property. Ensure the subsidiary ledger contains all necessary information regarding date purchased, cost, location, model, and serial numbers, etc.-PAGE 24**						
64	24	Reconcile physical inventory to tie to the subsidiary property ledger FAS.	01/03/05	10/31/05	Administration Department			
65	24	Add to FAS, all tagged items discovered in the physical inventory which were not on FAS.	01/03/05	01/03/05	Administration Department	x		
66	24	Tag any untagged items listed in FAS will be tagged.	01/03/05	01/03/05	Administration Department	x		
67	24	Reconcile the physical inventory, general ledgers and FAS until the records are complete and accurate	10/31/05	12/30/05	Admin Supervisor,IT Manager,Accounting Manager			
68	24	List any open items for future research or disposal.	01/03/05	10/31/05	Admin Supervisor,IT Manager,Accounting Manager			
	24	**RECOMMENDATION 2: Develop policies and procedures to ensure the property subsidiary ledger is periodically reconciled with the general ledger.-PAGE 24**						
69	24	Reconcile FAS asset reports monthly to the general ledger prior to calculating the depreciation.	12/30/05	ongoing	Accounting Department			
	25	**RECOMMENDATION 3: Develop policies and procedures as indicated in Finding 1 above, to ensure consistent treatment of property at the CLO. For example, ensure all property is tagged upon receipt.-PAGE 25**						
70	25	Identify procedures from the purchase, receipt, recording, depreciation and monitoring of CLO assets to ensure consistent treatment of property	01/03/05	12/30/05	Accounting Manager,Admin Supervisor,IT Manager	x		

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
71	25	"Tag" all asset purchases, including IT purchases.	01/03/05	ongoing	Administration Department	x		
	25	**RECOMMENDATION 4: Ensure a physical inventory of fixed assets is conducted at least once every two years.-PAGE 25**						
72	25	Physical inventory will take place annually	01/03/05	ongoing	Administration Department			
73	25	Update Administration Policies & procedures to document annual inventory process	01/03/05	12/30/05	Administration Department	x		
74	25	Design inventory report to be used after each inventory takes place. Reconcile report to the FAS and general ledger records.	06/01/05	06/30/05	Administration Department	x		
	25	**L. Multiple Version Financial Statements**						
	25	**RECOMMENDATION: NONE-PAGE 25**						
75	25	Auditors will not be presented with financial statements prepared on a basis distinct from our regular monthly accouting.	06/30/05	ongoing	Accounting Department	x		
76	25	Auditors will not be provided with a preliminary draft of the financial statemenst until we have completed our post-year-end review.	06/30/05	ongoing	Accounting Department	x		
	27	**M. Incomplete Financial Statements**						
	27	**RECOMMENDATION: NONE-PAGE 27**						
77	27	Financial statement will be prepared for every estate under review.	06/30/05	ongoing	SDIC			
78	27	Provide auditor with spreadsheet of all entities and identify the resason for exclusion.	ongoing	ongoing	Accounting Department			
	28	**N. Inconsistent & Untimely Uploading of New Estates' Balances**						
	28	**RECOMMENDATION - NONE - PAGE 28**						
79	28	Verify on certain estates, the existence of assets and liabilities before loading them into the CLO general ledger.	ongoing	ongoing	Financial Analyst			x
80	28	Keep records of the opening balance sheet and maintained control of the books of the estates by keeping a legacy or subsidiary system intact until the estate was successfully loaded.	ongoing	ongoing	Financial Analyst			x
81	28	Load conservation date balances to the ledger to maintain a snapshot of the conservation-date balances, as inherited at seizure	ongoing	ongoing	Financial Analyst			x
82	28	Load the balances provided within a reasonable time period.	ongoing	ongoing	Financial Analyst			x

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
83	28	Identify this time period on an estate-by-estate basis and determined by the complexities encountered during the seizure process.	ongoing	ongoing	CLO Management	x		
84	28	Commission, on large or complex estates, a separate examination of the conservation date balances by external auditors	ongoing	ongoing	Chief Financial Officer, Estate Trust Officer	x		
85	28	Identify the balances that are not reconciled within this reasonable time period before the first court reporting date, one year from the order of liquidation.	01/03/05	ongoing	Financial Analyst	x		
85	28	Adjust on both the opening and general ledgers ,if after the one- year discovery phase, research indicates adjustments to be necessary to the opening balances.	01/03/05	ongoing	Financial Analyst	x		
	30	**FINDING IIB - Inadequate Reconciliation Practices**						
	30	**A. Inconsistent Documentation & Performance of Investments Reconciliations**						
	30	**RECOMMENDATION: Develop policies and procedures to annually reconcile investment managers' and investment custodian statements, or obtain equivalent work from the investment manager or custodian. At a minimum, documentation should compare CUSIP numbers, units, maturity dates, interest rates, market prices, market values, and interest earned; placing particular attention on large variances in market price , or the inability of one or both outside statements to state a market price other than the original cost. Ensure the reconciliations are documented and all material variances are investigated.-PAGE 30>31**						
87	30	Tie two investment manager reports monthly, to the investment custodian report for the number of shares and specific securities held to ensure that all securities are accounted for regardless of the varying marked valuation methods used by the parties.	01/03/05	ongoing	Investment Supervisor	x		
88	30	Provide full documentation of the three-way reconciliation and add a step to the month-end close process to formally sign-off on a reconciliation summary.	01/03/05	ongoing	Investment Financial Analyst,Accounting Manager		x	x

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
89	30	Identify and file any material differences in month-end valuation and email requests for additional research by the custodian and managers will be included in the file. Update these policies and procedures.	01/03/05	ongoing	Investment Financial Analyst	x		
90	30	Request and receive electronic reconciliations from investment managers to the CLO on a monthly basis.	02/01/05	ongoing	Investment Supervisor		x	x
91	30	Incorporate into the contractual obligations of the investment managers, in the 2006 contract, these reconciliations that are to tie the manager's portfolios to those reported by the custodian.	12/29/06	12/29/06	Chief Financial Officer			
	32	**B. Improper bank Reconciliation Procedures**						
	32	**RECOMMENDATION: Develop policies&procedures to ensure outstanding bank reconciling items are detailed&adequately supported. This includes maintaining a single listing of outstanding checks&removing cancelled & reissued checks from the outstanding check listing.-PAGE32**						
92	32	Reconcile accounts, through a reconciliation form, to the general ledger by recording income/expense activity each month.	01/03/05	ongoing	Investment Financial Analyst,Accounting Manager	x		x
93	32	Review and approve formal reconciliations of large or active accounts.	01/03/05	ongoing	Investment Financial Analyst	x		x
94	32	Note any reconciling items on the bank reconciliation with a description of the item and resolve either immediately or, if further research is required, as soon as possible.	01/03/05	ongoing	Investment Financial Analyst	x		x
95	32	Maintain an internal outstanding check listing for the West Coast Opt out account to track numerous voids and reissues to the entire distribution and to reconcile to the policyholder information in the Claims Department.	01/03/05	ongoing	Investment Financial Analyst		x	x
96	32	Review bank receivables of Opt-Out accounts monthly	01/03/05	ongoing	Accounting Manager		x	x
	34	**C. Insufficient Receivables Reconciliations**						
	34	**RECOMMENDATION: 1. Perform reviews and reconciliations of the receivables accounts to determine/verify appropriate recording. For those incorrectly classified, repost to the correct account.-PAGE 34**						
97	34	Review and reconcile monthly the CLO receivables accounts as noted in the response to Finding IIa. Task 40.	01/03/05	ongoing	Accounting Manager		x	x

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
98	34	Reconcile on a monthly basis the detailed activity in the Other Receivables account for review.	01/03/05	ongoing	Accounting Tech III		x	x
99	34	Review monthly to highlight journal entries which may be coded in error or classified improperly and allow for correction immediately.	01/03/05	ongoing	Accounting Tech III		x	x
105	34	Disclose any exceptions for inherited balances in existing open CLO estates with financial reports as well as in an addendum to the Accounting Policies and procedures manual.	01/03/05	12/30/05	Accounting Tech III	x		
	34	**RECOMMENDATION 2. Consistently monitor & research outstanding receivables. Ensure collections are actively pursued & processed timely.-PAGE 34**						
101	34	Allow for regular monitoring, monthly reconciliations to the various receivable accounts and research of outstanding items deemed cost-effective to pursue. Monitor the collection efforts for these items in the response to Finding IIA.	01/03/05	ongoing	Claims Department,Premium	x		
	35	**FINDING IIC - Inadequate Separation of Duties**						
	35	**A. Inadequate Separation of Duties over Information Technology Purchases & Fixed Assets**						
	35	**RECOMMENDATION: Establish monitoring and approval systems to ensure adequate separation of duties and controls over the information technology purchasing and payment procedures as well as a separation of the fixed assets functions of authorization, recordkeeping&custody. PAGE 35**						
102	35	Implement a web-based automated Purchase Order (PO) system.	07/30/03	07/30/03	IT Department		x	
103	35	Implement an online maintenance and inquiry screen is available permitting the authorized user to view open and closed POs, number, requester, approver, total amount, date created, and time created.	07/30/03	07/30/03	IT Department		x	
104	35	Enhance the system to permit a user, when granted the authority, to view and print any PO.	12/30/03	12/30/03	IT Department		x	
105	35	Implement a procedure whereby at the time the PO is approved, a copy is printed and routed to the Administration Supervisor to be matched to the merchandise when it is received.	05/02/05	06/30/05	Admin Supervisor,Database Administrator	x		

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
106	35	Establish a procedure for applying tags to any computer-related equipment while custody of tags remain in Administration.	01/03/05	06/30/05	Administration Department,IT Department,Database Administrator	x		
107	35	Apply the tags to computer-related items.	01/03/05	ongoing	IT Department,Administration Department	x		
108	35	Document procedures outlining the details of tagging assets within the Purchase and Receiving cycle procedures.	06/30/05	06/30/05	Administration Department,IT Department	x		
	36	**B. Inadequate Separation of Duties over the Payroll Functions**						
	36	**RECOMMENDATION: Separate incompatible payroll duties. Ensure that the same person is not responsible for the authorization, recordkeeping, and custody of payroll.-PAGE 36**						
109	36	Review and approve payroll summary sheets and any changes made to current personnel data prior to the issuance of data to the payroll vendor.	01/03/05	ongoing	Department Chief & 2nd Sr. Officer		x	x
110	36	Review the journal entries and source data after the transactions occur for posting in the general ledger.	01/03/05	ongoing	VP of Finance		x	x
111	36	Segregate and perform the various payroll functions of timesheet processing, payroll preparation and submittal, and distribution of checks and vouchers.	02/01/05	02/01/05	Payroll Coordinator,HR Department		x	
112	36	Process payroll changes & controlling information exchanges between CLO & the vendor for additional controls are in place to prevent duplication&unauthorized changes. Document in the HR policies & procedures per response to Finding I.	01/03/05	12/30/05	HR Department	x		
	37	***FINDING IIIA - SECTION III - INEFFECTIVE CONTROLS - A. Uncorrected Prior Audit Findings***						
	37	**RECOMMENDATION: Develop & implement an action plan to promptly resolve the control weaknesses identified in this report & any unresolved control weaknesses identified in the referenced prior 3 reports.The action plan should be specific as to responsibilities & frames. PAGE 37**						

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
113	37	Contract with Department of Finance, with the intent of receiving timely audit reports and using them as a basis to strengthen controls.	01/03/05	12/30/05	Chief Financial Officer			
117	37	Correct some of the findings in this Internal Control report as described in various responses in this report	01/03/05	12/30/05	CLO Management	x		
115	37	Create a project plan to address other uncorrected findings which are still pertinent to the current CLO organization	03/30/05	12/30/05	VP of Finance	x		
119	37	Resolve some findings by new processes or procedures not previously examined by the DOF.	06/30/05	12/30/05	CLO Management	x		
117	37	Study the feasibility of performing oversight procedures over IGA adjusted claims as identified in Appendix A: Finding A.5-13.	04/29/05	12/30/05	Claims Officer	x		
118	37	Review on a bi-weekly basis, this project plan will include specific tasks, milestones and responsibilities.	05/02/05	ongoing	Sr. Management	x		
119	37	Add any new findings to the project plan as the 2003 AUP report is received and reference any duplicated findings.	07/15/05	12/30/05	VP of Finance			
	39	***FINDING IIIB - Ineffective Controls over Processes***						
	39	**A. Ineffective Controls over the Budgetary Process**						
	39	**RECOMMENDATION 1: Ensure budgetary deadlines are established and information is submitted by all CLO units by the predetermined due date.-PAGE 39**						
120	39	Initiate a budget process with a specific schedule of deadlines for submittal of departmental and estate budget information for inclusion in the 2005 budget draft.	09/01/04	12/30/04	VP Finance, Accounting Manager		x	
121	39	Distribute the schedule and support planning documents at a budget kick-off meeting. on September 22, 2004	09/01/04	09/22/04	VP Finance		x	
122	39	Submit budget amounts and hours.	09/22/04	10/08/04	CLO Management		x	
123	39	Make adjustments and refinements to the final budget draft and approve.	12/15/04	01/03/05	VP Finance, Accounting Manager, Sr. Management		x	
	39	**RECOMMENDATION 2: Ensure the budget review and approval process is documented and maintained in a file for use when developing the budget and future monitoring.-PAGE 39**						
124	39	Update the budget review and approval process to reflect the improved process the CLO followed to develop the 2005 budget.	01/03/05	02/28/05	Accounting Manager		x	
125	39	Document in the Accounting policies and procedures manual produced in 2005 as noted in the response to Finding I.	08/31/05	12/30/05	Accounting Manager			

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
126	39	Archive the electronic budget-related schedules, deliverables and drafts for each year on the CLO's public file directory.	01/03/05	ongoing	Accounting Manager		x	x
	39	**RECOMMENDATION 3: Follow policies and procedures requiring unit managers to periodically compare budget and actual expenditures, and research and report significant variances to CLO management.-PAGE 39**						
127	39	Review the budget variances on a monthly basis. The first review occurs in early March 2005 for the month ended January 31, 2005.	03/01/05	03/01/05	Sr. Management, Estate Trust Officers		x	
128	39	Submit the first quarterly variance report after the close for the month of March 2005.	03/31/05	05/16/05	Accounting Manager		x	
	39	**B. Ineffective Controls over the Legal Contracts Process**						
	40	**RECOMMENDATION 1: Ensure all contracts are appropriately reviewed and authorized prior to inception.-PAGE 40**						
129	40	Review all contracts appropriately and authorize according to the CLO's contracting policies and procedures.	01/03/05	ongoing	Contracts/Legal		x	x
	40	**RECOMMENDATION 2: Ensure contract files are complete and include all necessary supporting documentation.-PAGE 40**						
130	40	Maintain comprehensive contract files which include correspondence, status and version controls for all contracts, as required by the CLO's contracting policies and procedures.	01/03/05	ongoing	Contracts/Legal		x	x
131	40	Create these contracts at the CLO and all files for contracts initiated under the new policy will have the required documentation.	01/03/05	ongoing	Contracts/Legal,Contract Analyst		x	x
	41	**RECOMMENDATION 3: Ensure a system is in place to number all contracts, whether initiated or inherited by the CLO.-PAGE 41**						
132	41	Follow the contracting policies and procedures and number each contract as required.	01/03/05	ongoing	Contracts/Legal		x	x
	41	**C. Ineffective Controls over the Review & Posting of Receivables to the General Ledger**						
	42	**RECOMMENDATION 1: Ensure all amounts posted within the financial records are reviewed and properly classified.-PAGE 42**						

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
139	42	Review all journal entries posted to the general ledger prior to posting.	01/03/05	ongoing	Accounting Manager,Accounting Supervisor		x	x
134	42	Discover if an item is miscoded when monthly management reports are produced or when the trial balance review is complete.	01/03/05	ongoing	Accounting Management, Financial Analyst	x		x
135	42	Assign items to certain accounts with the knowledge that the item will be re-classified when the research is completed, in an effort to keep the month-end closing process on schedule.Insure reclassifications occur on open month-end issues.	01/03/05	ongoing	Accounting Manager,Accounting Supervisor	x		x
	42	**RECOMMENDATION 2: Ensure policies for exceptions to the rules are appropriately documented within the CLO administrative manual.-PAGE 42**						
136	42	Disclose any exceptions to the consistent method of coding in the general ledger in notes to the 2004 financial statements produced for estates.	01/03/05	ongoing	Financial Analyst	x		
	44	**D. Estate Account Balances not Timely Transferred during the Final Close Process**						
	44	**RECOMMENDATION: Transfer all assets out of the investment pool accounts on closed estates. Remaining amounts attributed to the estates closing budget should be maintained with the CLO's business unit 999.-PAGE 44**						
137	44	Follows the estate closures activities as specified in the closing court order. These activities include distribution, forgiveness of debt and escheatment.	01/03/05	ongoing	Accounting Department		x	x
138	44	Improve the closed estate transfer process so that it occurs on a timely basis and is reviewed periodically	01/03/05	01/03/05	Accounting Supervisor, Financial Analysts		x	
139	44	Update monthly a master list of closed estates and communicate to the Accounting Department, with newly-closed estates specifically identified.	01/03/05	ongoing	Financial Analyst		x	x
140	44	Ensure the closed estate balances are transferred & blocked from future use.	01/03/05	ongoing	Accounting Supervisor, Financial Analysts		x	x
141	44	Identify and transfer every balance sheet account balance in the JD Edwards general ledger that did not pertain to an existing open estate. This same review process will take place in all subsequent years.	01/03/05	ongoing	Financial Analyst	x		x
	45	**E. Incorrect Reinsurance Premium Processing**						

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
	45	**RECOMMENDATION: Review the policies and procedures over the reinsurance billings processes to ensure that controls are in place and functioning including the review and verification of contract stipulations prior to payment of billings.-PAGE 45**						
142	45	Implement a procedure whereby certain manual calculations are independently reviewed.	01/03/05	ongoing	Reinsurance Department	x		
143	45	A compensating control exists since these calculations are also reviewed by the brokers and errors are identified and corrected before final billings are further processed.	01/03/05	ongoing	Reinsurance Department	x		x
	45	**F. Ineffective Controls over the Financial Reporting Process**						
	45	**RECOMMENDATION: NONE-PAGE 45**						
	45	DUPLICATE: See responses to the DOF Findings IIa, Multiple Version Financial Statements and Incomplete Financial Statements above.						
	46	***FINDING IVA - SECTION IV - INFORMATION TECHNOLOGY CONTROLS - A. Insufficient Information Technology Policies and Procedures***						
	46	**RECOMMENDATION: Ensure all operational processes and procedures are appropriately documented, revised periodically, and maintained in a centralized manual.-PAGE 46**						
144	46	Update IT Department's documentation.	01/03/05	12/30/05	IT Department	x		
145	46	Complete the following procedures upon the completion of audit field work: Password policy, User Account Management for Windows, User Account Management for AS/400, Remote Access Policy, and Use of Company Owned Laptops.	01/03/05	06/30/05	IT Department	x		
146	46	Create other desktop procedures upon the completion of audit field work.	01/03/05	06/30/05	IT Department	x		
147	46	Publish the Information Technology Audit Manual to govern the review of transaction history logs as described in finding IVe below.	01/03/05	01/03/05	IT Department,Chief Information Officer		x	
148	46	Complete Extensive GOLD System documentation to document the development of the system.	01/03/05	01/03/05	IT Department		x	

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
149	46	Produce documentation as enhancements are developed and as application maintenance is performed.	01/03/05	ongoing	IT Department	x		x
	46	***FINDING IVB - Weaknesses in Controls over Information Technology Access Controls***						
	47	**RECOMMENDATION 1: Prepare access path diagrams and analyze logical access paths whenever system changes occur.-PAGE 47**						
150	47	Update logical diagrams of servers, services and key applications to illustrate and better define the user access paths.	04/01/05	06/30/05	Network Operations	x		
	48	**RECOMMENDATION 2: Ensure access to sensitive areas such as the computer room and the computer storage room is adequately controlled and limited to only those with a specific purpose.-PAGE 48**						
151	48	Review the security system database.	01/03/05	01/03/05	IT Department		x	
152	48	Restrict access to only those individuals in the IT Department that required access.	01/03/05	01/03/05	Network Operations		x	
153	48	Order a software and hardware upgrade that will permit separate zones. This installation is scheduled.	05/02/05	05/02/05	Network Operations,Admin Supervisor		x	
154	48	Restrict access to the computer supply room to just the Network Operations group.	05/02/05	05/02/05	Network Operations		x	
	49	***FINDING IVC - Weaknesses in Controls over Information Technology Service Continuity***						
	49	**RECOMMENDATION 1: Develop a written Disaster Recovery Plan for all CLO operations. Review and update this plan periodically as well as conduct periodic training and testing.-PAGE 49**						
155	49	Write a Disaster Recovery Plan, approve and publish.	05/31/05	05/31/05	Chief Information Officer		x	
	49	**RECOMMENDATION 2: Identify and document resources required to support critical operations. Review and update this listing periodically.-PAGE 49**						
156	49	Create diagrams: illustrating the location of all CLO and estate application databases.	01/03/05	04/30/05	Network Operations		x	

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
157	49	Create a network diagram with IP addresses, and an infrastructure diagram for the network switches. Due to the upcoming telephone cutover, thes two diagrams are being updated to reflect topology and configuration changes to support IP voice telecommunications. This will be completed by end of April 2005.	01/03/05	04/30/05	Network Operations		x	
	49	***FINDING IVD - Inadequate Separation of Duties***						
	49	**RECOMMENDATION: Segregate incompatible information technology duties. Ensure the same staff person cannot independently write, test, approve, and implement program changes.-PAGE 49**						
158	49	Update job descriptions to segregate phases of the system development life cycle between business analysts and programmers.	09/30/04	09/30/04	Chief Information Officer		x	
159	49	Alter the organizational structure of the IT Department to segregate the production control function under the Database Administrator who now reports directly to the Chief Information Officer (CIO).	09/30/04	09/30/04	Database Administrator,Chief Information Officer		x	
	49	***FINDING IVE - Insufficient Monitoring of Information technology Transaction History Logs***						
	50	**RECOMMENDATION: Review transaction history logs daily and investigate abnormal activity. Maintain these history logs in accordance with CLO's record retention policies or a reasonable length of time.-PAGE 50**						
160	50	Monitor regularly the application, system and security logs for Windows servers with the publication of the Information Technology Audit Manual.	05/30/04	ongoing	Network Operations		x	
161	50	Monitor domain controllers daily, as per the manual, and other servers are monitored weekly.	01/03/05	ongoing	Network Operations		x	
162	50	Maintain log history documentation in folders for quarterly compliance reviews and filed for long-term historical review for up to 2 years.	01/03/05	ongoing	Network Operations		x	
	50	***FINDING IVF - Undefined Profiles for Specific User Groups***						

2004 Internal Control
Response Matrix

Task #	Final Report Page #	Description	Start Date	End Date	Responsibility	In Process	Completed	Ongoing
	50	**RECOMMENDATION: Document and define the specific access afforded to user groups. Revise and update as necessary.- PAGE 50**						
163	50	Upgrade the network to Windows 2000 featuring Active Directory.	06/30/04	06/30/04	Network Operations		x	
164	50	Create new user groups and improved security was placed over departmental drives and user folders with more detail related to resource access documented in the descriptions and notes fields.	01/03/05	01/03/05	Network Operations		x	
165	50	Update the descriptions and notes fields for older groups to include resource and permissions details	04/29/05	04/29/05	Network Operations		x	

THE STATE BAR
OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL

Scott J. Drexel, *Chief Trial Counsel*

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June 16, 2005

BY FACSIMILE TRANSMISSION TO (916) 445-0596

Honorable Don Perata and the
Honorable Members of the Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814-4900

Re: State Bar Chief Trial Counsel Designate Scott J. Drexel
Statement of Goals

Dear Senator Perata and the Honorable Members of the Senate Rules Committee:

Thank you for providing me with this opportunity to outline my major goals as the State Bar's newly-designated Chief Trial Counsel. I am intimately familiar with the State Bar's attorney disciplinary process, having served as Chief Counsel for the State Bar Court since 1989 and, additionally, as its Administrative Officer since 1995. During my ten years in the State Bar's Office of General Counsel (1976-1986), I briefed and argued approximately 25 attorney discipline cases before the California Supreme Court. While in private practice (1986-1989), I also acted as an outside State Bar prosecutor in approximately 25 additional disciplinary proceedings.

The Office of the Chief Trial Counsel plays a crucial public protection role in the regulation and discipline of attorneys in California. In addition to investigating and prosecuting meritorious disciplinary complaints against attorneys, the Office of the Chief Trial Counsel monitors criminal proceedings and convictions of attorneys and investigates "reportable actions" from courts, financial institutions and insurance companies.[1] "Strike teams" from the Office of the Chief Trial Counsel respond on an emergency basis to the site of accidents and natural disasters to prevent the improper solicitation of clients by attorneys and cappers. When an attorney dies, is disbarred or resigns from practice, becomes physically or mentally incapacitated or effectively abandons his or her law practice, the State Bar may seek an order of the superior court assuming jurisdiction of the attorney's practice. The Office of the Chief Trial Counsel then assists the superior court by taking custody of the attorney's files and records and returns the files to the clients and/or assists them in finding new counsel. In addition, the State Bar can and should play a significant role in curtailing the unauthorized practice of law by both disbarred, resigned and suspended attorneys and by non-attorneys.

[1] The State Bar Act specifically requires courts, financial institutions and insurance companies to report various types of attorney misconduct to the State Bar. (See, e.g., Bus. & Prof. Code, §§ 6086.7, 6086.8, 6091.1.)

During my first seven weeks as the newly-designated Chief Trial Counsel. I have immersed myself in the operation of the office and have sought to familiarize myself with its current processes and procedures. I have also met with many individuals, including the State Bar's Executive Director, the current managers of the Office of the Chief Trial Counsel, State Bar Court judges and frequent practitioners in the State Bar Court, regarding their perceptions of the efficiency, effectiveness and quality of the work of the Office of the Chief Trial Counsel. While my investigation and evaluation process is not yet complete, I believe that the general organizational structure of the office is sound, that there are generally adequate resources available to the office and that the employees are competent and dedicated to the important work of the Office of the Chief Trial Counsel. Nevertheless, I believe that the efficiency and effectiveness of the office can and should be further improved to enhance our ability to perform our critical public protection mission.

Following is a list of the major goals that I intend to pursue and accomplish during my first term as the State Bar's Chief Trial Counsel.

1. Assess the efficiency and effectiveness of the current OCTC structure and implement appropriate adjustments;

2. Establish and implement performance expectations for the timely and fair investigation, prosecution and disposition of attorney disciplinary complaints and proceedings;

3. Continue the effective use of the Lawyer Assistance Program and the Alternative Discipline Program for the rehabilitation of attorneys with substance abuse or mental health issues, while providing for appropriate public protection;

4. Foster and increase regular communications with (a) courts; (b) law enforcement authorities; (c) financial institutions; (d) insurance companies; and others regarding compliance with statutory reporting requirements under the State Bar Act;

5. Increase outreach and communications to the public, especially minority communities, regarding the public protection services provided by the State Bar and educating them on being informed and intelligent consumers of legal services;

6. Increase educational outreach and communications with local bar associations and members regarding the discipline system and avoiding the conduct which leads to disciplinary complaints and proceedings;

7. Foster and increase cooperation between State Bar and law enforcement entities relating to (a) the unauthorized practice of law; (b) the improper solicitation of clients; and (c) the abuse of existing legal remedies, e.g., Bus. & Prof. Code, § 17200 actions, ADA lawsuits, FPPA lawsuits, etc.;

8. Make more effective use of currently available legal remedies to pursue disbarred, resigned and suspended attorneys who engage in the unauthorized practice of law; and

9. Seek and utilize enhanced statutory authority to curtail the unauthorized practice of law by non-attorneys.

I will be pleased to discuss these goals with you at my confirmation hearing on June 22, 2005, and to respond to any questions that you may have.

Very truly yours,

Scott J. Drexel

SJD:dim

June 9, 2005

The Honorable Don Perata
Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814
Attn: Nettie Sabelhaus

Dear Senator Perata:

Thank you for the opportunity to introduce myself and to address the important issues that you have identified through the question you asked. The breath of your questions certainly reinforces the complexity of the challenge before us – to assure all Californians breathe clean, healthy air.

Question 1: What do you hope to accomplish during your tenure as a member of the California Air Resources Board? What goals do you have for the board and how will you accomplish them?

As a public member of the California Air Resource Board the greatest strength I bring to California is my passion for solutions. This is coupled with my leadership experience in running a mid-size paint manufacturing and hazardous waste business in East Los Angeles, plus my desire to make a difference in the workplace and community I love. I believe these skills are essential at this time in ARB's history when the solutions for our air pollution challenges are going to take all the efforts of all the stakeholders to succeed. I believe that a healthy environment and a strong economy are not mutually exclusive. It is my hope to be a strong facilitator for the variety of stakeholders, to push the regulation envelope, with regulation which will inspire innovation by developing new technology or better using existing technology in new ways to meet our goals. I expect to be an informed solution oriented problem solver to drive our air quality goals and expectations.

In many ways growing up as a 4th generation Californian has shaped my hopes and dreams for this great state we share. On one hand I remember the clean clear days of my childhood and on the other hand I remember how negative I was when the laws for the catalytic converters for passenger cars were passed in the late 60's and early 70's. Living through this period as an impressionable young adult demonstrated to me how much I took our environment for granted. Disdained, I gained change and ultimately discovered amazing potential of innovation. It is with that understanding and a passion to see possibilities that I run my family's specialty paint manufacturing businesses.

Ellis Paint Company has been a leader in environmental stewardship for over 25 years. We believe paint provides an important value to our society from beautification to protection. Simultaneously, we know that the hazardous chemicals we use to manufacture our paint also have a health and environmental impact especially when used and/or disposed of improperly. Starting in 1979 Ellis Paint was the first California paint manufacturer, and to my knowledge the only paint manufacturing company to recycle paint related waste solvents generated by our customers. To date Ellis Paint Company, united with its sister company

JUN 10 2005

Pacific Resource Recovery Services has recycled over 3 million gallons of waste solvent - all from California industrial and automotive refinish customers. Ellis Paint Company has also demonstrated its environmental leadership by meeting every California rule passed by our air quality districts with formulating high quality compliant products. Ellis took an early stand in the 1980's to support our customer base with quality compliant coatings and for the last 20 years we have provided compliant solutions for paint, solvent, equipment and disposal. This gives our California customer base the choices which will allow them to do business in this great state while being compliant. Finally, Ellis Paint Company is a leader in our community – East Los Angeles. We believe strongly it is our responsibility not only to be a great corporate citizen but to work with our community to make it a better place to work and live. We consider ourselves partners with many of the dedicated community organizations like the Mother's of East Los Angeles, the Boyle Height Chamber of Commerce, Roosevelt High School, Neighborhood Council, and the National Student Art Competition. Besides the traditional financial and personnel help our community interaction has included community meeting to discuss the impact of our facility on the neighborhood and community health and safety audits.

Question 2: How can the state achieve needed emission reductions if the soon to be largest emission sources are out of the control of your board?

California's air pollution is a national problem. Based on the Federal 8-hour ozone standard, of the 170 million Americans who are exposed to unhealthful air, 21% live in California. Therefore it is imperative the leadership of all California's vast resources pull together to resolve the challenge of port and goods movement pollution. The ARB must use its reputation for driving positive environmental change to influence national and international stakeholders. This would include working with other states and countries, the California congressional delegation, and US EPA to articulate our needs within the federal government. Another strong suit of the ARB is to partner with the companies of this estimated 200 billion dollar industry to develop and implement the technology which will provide the abatement of this source of air pollution. Finally, we have seen time and time again that the ARB has been the leader in establishing environmental standards and we should continue to do so by testing the limits of our State's authority.

Question 3: What does this mean for the State Implementation Plan?

California's ability to meet the federal air quality standards requires the leadership of all regulatory agencies working towards the goal of clean air. Each agency serves a critical component towards attainment so the preverbal saying "we are only as strong as our weakest link" is very true. US EPA, the ARB, and local air districts all need to cooperate and contribute to California's attainment strategy. In addition to the governing agencies all the stakeholders of industry, our cities and the communities must do their share so that infrastructure plans "conform" to the broader strategy. An example of this is currently being played out with the proposed LNG Terminal in the Port of Long Beach.

Question 4: If the emission levels associated with goods movement cannot be lowered to meet health-based air quality standards for ozone and particulate matter, what would you recommend the Board do?

I am not convinced that the emission levels associated with goods movement cannot be lowered to meet health-based air quality standards for ozone and particulate matter. In fact the emissions from goods movement must be reduced. There is no alternative. These emissions are already too high and have a disproportionate impact on the communities within the South Coast Air Basin, specifically those communities adjacent to ports, rail yards, and major transportation corridors. To accomplish the needed reduction in emissions we should achieve a mix of regulatory actions, incentive programs, and agreements with the industry sources of those emissions. The ARB has a multi tier approach to reducing locomotive and rail yard emissions including 2 MOUs to reduce emissions, a cargo handling regulation for intermodal facilities which is expected to be before the Board in November 2005, and a clean diesel fuel rule for captive locomotives which was passed by the Board in November 2004; to be effective on January 1, 2007. Additionally, under an agreement with the Port of Long Beach, the Port is providing $2 million to help tenants convert to the exclusive use of alternative diesel fuel and install pollution-control devices on all diesel equipment. I believe ARB will continue to push for and accomplish the much needed reductions in emissions associated with goods movements.

Question 5: What is the status of the State Implementation Plan? What needs to be done to achieve attainment?

The State Implementation Plan (SIP) developed in 1994 and approved by US EPA in 1997, is our blueprint to meet federal air quality standards by the applicable deadlines set forth in the federal Clean Air Act. For instance, the ARB and local air districts covering six regions of the State developed a comprehensive control strategy to attain the federal one-hour ozone standard. Most of the measures anticipated in the 1994 SIP, and many others, have since been adopted. The ARB has also created and implemented the "2003 State and Federal Strategy for California SIP" which reaffirms the ARB's commitment to achieve health-based air quality standards in all California communities. This is a roadmap of the next generation of statewide measures to reduce air pollution, and also provides emission reduction benchmarks for the Board and the public to use in assessing proposed regulations geared to meet our overall goals. The next planning cycle is 2007/2008. Careful review of our progress at the state and local air district level will allow us to measure our successes and determine the necessary strategies needed to meet future benchmarks. In the interim, US EPA, the ARB, and the local air districts will continue to adopt, implement, and enforce emission control measures consistent with prior SIP commitments.

Question 6: How much of the State Implementation Plan relies on the "black box" or Section 182(e)(5)? Do you think that new technologies will provide the required emission reductions?

The federal Clean Air Act recognized the need to rely on the development of new technology control measures to meet the air quality goals especially for those areas classified as "extreme" non-attainment under Section 182(e)(5), which is known as the

"black box" measures. Only these "extreme" non-attainment areas, like the South Coast AQMD and San Joaquin Valley, may include "black box" measures in their SIPs. In the 2003 SIP for the South Coast AQMD, 29% of the reductions fall under the "black box" to be adopted post-2006. Furthermore, 71% of the reductions come from a combination of adopted measures and near-term strategies to be developed by 2006. Long-term emission reduction measures include already demonstrated but commercially unavailable control technologies and "on-the-horizon" technologies requiring advancements that can reasonably be expected to occur in the near future. Additionally, this category also includes measures that require commitments for research, development, and widespread commercial application of technologies that may not yet exist but are expected given the rapid technological advances gained over the past 20 years. We need to continue the pursuit of these advanced technologies and example being zero emitting options like hydrogen fuel cells powered with renewable electricity. Yes, I believe the new technologies will produce the required emission reductions. 35 years of history has shown us just how innovative our entrepreneurial spirit is and I have no doubt we will forge ahead with the innovation of lower emission solutions. In the interim, the immediate concern is turning over the "legacy" fleet of vehicles and engines used throughout commerce. In order to solve this problem, we need to establish regulations, incentives, and thoughtful investment programs that will favor the reduction of emissions. New technology will create the required emissions reductions, but by implementing the aforementioned strategies, progress can still be made during the development of new technologies.

Question 7: Do you believe that there may be a difference in health effects of the combustion of different fuels? If so, should your Board treat fuels that cause different health effects differently?

I believe that there may be differences in the health effects of the combustion of different fuels. Each fuel type has its advantages and disadvantages, including the differences on our health. Because of this it is imperative that the ARB address fuels that cause different health effects on an individual basis. Historically, the ARB has set performance standards against which any fuel and or vehicle type may compete. The board examines emissions, toxicity, climate change effects, and multi-media impacts when looking at each alternative type of fuel. Moreover, fuels and vehicles are considered as a system, since the characteristics of each affect the other. For example, low sulfur diesel is needed to enable the use of some types of particulate traps, which reduce harmful emissions. Conversely, low volatility gasoline reduces the pressure on automotive evaporative control systems and results in fewer leaks to the atmosphere. In 2003, the ARB and the California Energy Commission co-authored a report on petroleum dependency that, among other things, recommended a shift away from a purely fuel neutral policy. Specifically, that report called for greater fuel diversity in California to increase the state's energy security, moderate price spikes, and advance environmental objectives. The Administration is currently evaluating how to effectuate that policy and how to balance fuel diversity against other societal goals.

Question 8: Is the Air Resources Board developing strategies for reducing greenhouse gases from stationary sources? If so, please describe those strategies.

The Air Resource Board is developing strategies for reducing greenhouse gases from stationary sources. On June 1, 2005 Governor Schwarzenegger issued Executive Order S-3-05 establishing greenhouse gas (GHG) reduction goals for the State of California. These

are: by 2010 reduce GHG emissions to 2000 levels; by 2020 reduce GHG levels to 1990 levels; by 2050 reduce GHG levels to 80 percent below 1990 levels. As a charter member of the Governor's "Climate Action Team" established in March 2005, the ARB is working with other state agencies to establish strategies to achieve these requirements. The most effective strategies for reducing greenhouse gases from stationary sources are increased energy efficiency of all kinds, including lighting, heating and manufacturing systems. It is vital to note, however, that California is already a very energy efficient state on a per capita basis, which means there is no easy or painless answer to reduce greenhouse gases from stationary sources.

Question 9: Can you please describe the Administration's plan to reduce air pollution emissions by 50 percent? Could you specify the emission reductions anticipated in ozone, particulate matter, oxides of nitrogen and any other of the approximately 200 pollutants the Board has identified as air toxics?

The Administration's plan to reduce air pollution emissions by 50 percent includes 3 major components: implementation of incoming regulation, continued regulatory review of current standards for additional reductions and new regulation for source reduction. California is on the path to achieving the Administration's 50 percent goal for smog precursors (ROG and NO_x) and for diesel particulate matter. The new near-term strategies to reduce these emissions are being developed for consideration by the Board through 2006. These strategies are outlined in the ARB's 2003 "State and Federal Strategy for the California SIP" and the ARB's 2000 Diesel Risk Reduction Plan. Additional strategies will be developed for adoption post-2006 as part of the SIP process for the new 8-hour ozone and PM2.5 standards

Ozone – The reduction of ozone emissions (caused by the chemical reaction between oxides of nitrogen [NO_x] and volatile organic compounds [VOC] in the presence of sunlight) is included in the over all 50 percent reduction goal as detailed above. The relative mix of ROG vs. NO_x control strategies will vary by region based on atmospheric chemistry and by the extent of particulate matter pollution due to the fact that NO_x is also a precursor to secondary particulate matter formation. Implementation should also take place at the local level in addition to the state strategies outlined in the Administration's plan. Planning includes implementation of incoming regulation limits and updates on current standards with an eye on further reductions and new regulations. The ARB will have considered 19 specific measures that are potentially capable of reducing ozone-forming emissions statewide by over 240 tons per day in 2010.

Particulate Matter – Our focus for the 50 percent reduction goal is diesel particulate, as it dominates the state wide health risk from air toxins and contributes to overall particulate matter levels. The aforementioned 2000 Diesel Risk Reduction Plan sets a 75 percent statewide diesel emission reduction goal from 2000 to 2010. This equates approximately, to a 50 percent reduction between 2003 and 2010.

SO_x – The ARB has already achieved significant SO_x reductions by reducing sulfur in California fuels. As a result, California has met its goals and realized our health-based SO_2 and sulfates standards for many years. There is no need to continue targeting SO_x emissions. Instead, our efforts are focused on reducing sulfur levels in fuels specifically used

in off road sources like marine engines and locomotives in order to achieve the 50 percent reduction goal set forth by the Administration.

CO_2 – The ARB has just begun to address CO_2 as a greenhouse gas. In September of 2004, the ARB adopted requirements to reduce CO_2 and other greenhouse emissions form passenger vehicles. The ARB is exploring the impact of fuel policies on greenhouse gas emissions and potential measures for that sector. Based on information gathered during said exploration more specific goals can be set for the reduction of CO_2 and other greenhouse gas emissions. Concurrently, under the Governor's Executive Order S-3-5 the ARB will be developing strategies to reduce the GHG emissions from stationary sources thus adding to the total emissions reduced.

Question 10: Given that a large portion of air pollution in California is generated by federal sources, to what extent is the Governor's plan going to rely on air pollution reductions by the federal government? Will the Governor's plan rely solely on action by California regulators and by enacting legislation to achieve the full 50 percent reduction in air pollution?

In California the primary responsibility for controlling air pollution is shared by three important agencies. Under the umbrella of the US EPA who is ultimately responsible for implementation of the Clean Air Act, the ARB and 35 local air pollution control and air quality management districts form the leadership team to clean up California air. The success of the whole depends on each of our successes. The federal government must do its part to control air pollution or California will be unable to attain the national ambient air quality standards. US EPA has made great strides in setting standards for new diesel engines to be used in trucks, buses, construction, and farm equipment. Further, US EPA needs to adopt similar new engine standards for marine and locomotive engines. California is often the leader in environmental change and our incentive programs are a great example. To address existing sources under federal jurisdiction, a federal plan modeled after the Car Moyer program would be enormously helpful. To be a significant contributor to this effort, the level of federal investment in California needs to be at least $100-$200 million per year for the next decade. California cannot achieve its clean air goals without the positive actions of the federal government. However, since public health and the environment would be best served by the most rapid progress possible, as a member of the ARB I will do everything in my power to stimulate a federal response.

Question 11: What specific steps would you recommend to achieve these reductions?

The ARB Board and staff are working diligently to implement, review and set new standards which will realize the 50% target. As outlined in the "2003 State and Federal Strategy for California SIP" we expect that implementation of the State defined measures would significantly decrease ambient ozone and particulate matter levels, with ancillary benefits that cut carbon monoxide and air toxics." With the SIP review in 2007/08, the Board will evaluate the comprehensive attainment plans for each of the non-attainment areas in California. In the intervening time, the Board has instructed staff to keep us regularly apprised of California's progress toward the Governor's 50 percent pollution reduction goal.

Question 12: What strategies are being considered by your Board to deal with these sources of air pollution?

The ARB has current strategies in place to address the indirect and area wide sources of air pollution. For instance, the ARB has already adopted rules requiring a 50 percent emission reduction over uncontrolled levels for consumer products, which are an area source. Additionally, the Board will be considering more stringent standards later this year. Another example of the ARB strategy is the regulation for transportation refrigeration units that cause general air pollution while in transit and localized hot spots when loading and unloading at warehouse hubs. The ARB will continue its work to identifying, study and bring regulatory solutions for indirect and area wide sources of pollution.

Question 13: Do you believe your Board should look at land use decisions that contribute to these types of air pollution?

In order to successfully accomplish California's goals for its environment, including air quality all the governing agencies need to welcome each other's expertise. In fact it should be expected that the ARB is available and willing to participate with vital information regarding land use decisions. For instance, the ARB has historically provided guidance to local planners and air districts regarding mitigation methods. In May 2005 the Board approved an Air Quality and Land Use Handbook identifying the health risk posed by major freeways and recommending setbacks where feasible, to reduce these impacts. Working in concert will allow the best, most effective solutions to be adopted while minimizing unintended consequences.

Question 14: Has the ARB reviewed any of the air quality aspects of the Frontier Transmission Line Project? Will the ARB be involved in the review of this project?

At this time, the ARB has not reviewed any of the air quality impacts from the Frontier Transmission Line Project. My understanding is that the project is still in the pre-feasibility stage including preliminary analyses to further define the project route and financing options; this in addition to identifying legal, regulatory, environmental, and other development issues. As yet, no environmental documents providing project-specific details have been released for review at this time. As you know, the ARB has no authority to establish air quality requirements for power plant projects being constructed in other states. In spite of this, the ARB has been successful in recent years promoting clean technologies in power plants outside California borders as a commentator on Department of Energy's environmental review of a US-Mexico transmission line project. The combined efforts of the ARB, the local air district, and other stakeholders resulted in state-of-the-art emission controls being installed on natural gas-fired power plants proposed for construction in Mexicali, Mexico. Similar to the Frontier Transmission Line Project, these plants would export all or part of their electricity to the US via a cross-border transmission line. I am confident that the ARB will apply our influence to further promote the use of clean technologies during the expansion of the Frontier Transmission Line Project.

Question 15: Is the ARB looking into this project's potential for creating large amounts of air pollution from the burning of coal?

As detailed previously, the participation of the ARB in the Frontier Transmission Line Project would currently be premature, given that the project is still in the pre-feasibility stage. Without environmental documentation providing project-specific details with definitive details regarding each power plant that will connect into the proposed transmission line, the ARB would be unable to accurately estimate the potential air quality impacts from the project at this juncture. Our role will be to assist the lead state agencies in determining how California's participation in this transmission line would affect emissions of both traditional pollutants (such as NO_x and SO_x) and global warming gases. The ARB stands ready to assist in identifying measures that could be employed to minimize the adverse impacts that could occur from the extensive use of out-of-state electricity from coal fired power plants. As we have always done in the past, and will continue to do in the future, the ARB takes seriously the promotion of clean technologies in as many projects throughout the state of California as possible.

Once again thank you for the opportunity to introduce myself and share my opinions. Your thoughtful questions were insightful into our common hopes for the future and health of our state, and I welcomed the opportunity to share with you the Air Resource Board's data and goals. There is no question we have our work cut out for us. Clean air is neither an easy or simple task. It will take dedication, leadership and the willingness of all stakeholders to help shoulder the undertaking. We should put all our creative and innovative ideas to work towards the commendable goal for every Californian to breathe clean, healthy air.

Sincerely,

Sandra Berg

Sandra Berg

June 8, 2005

Ms. Nettie Sabelhaus
Appointments Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814

RE: Responses to Questions from Senate Rules Committee (May 17, 2005)

Dear Ms Sabelhaus:

I am very pleased to have this opportunity to respond to the questions posed by Senator Perata and his colleagues on the Senate Rules Committee, as well as to share my goals as a recently appointed member of the California Air Resources Board (ARB). I am very honored that Governor Schwarzenegger extended me the responsibility and privilege of serving him and the people of California on the ARB.

1. What do you hope to accomplish during your tenure as a member of the California Air Resources Board? What goals do you have for the Board and how will you accomplish them?

I am fortunate to be the current physician member of the Air Resources Board. I bring to the table my qualifications and perspectives as an experienced practicing (lung) physician, environmental health researcher, administrator, and academic teacher. I am also a person who can function as the leader or as a team player, and who actively listens to different viewpoints about issues. My ability to wear many hats has provided me with a foundation to better understand and consider complex, multi-faceted issues before the Board. I have learned that good or reasonable decisions are made with the best possible scientific and economic information. As a physician, I also know that we do not always have the optimal information to base medical decisions, but we must nonetheless frequently proceed with integrity and the best probability for a projected outcome in a given patient.

I have already learned much about socioeconomic and technological aspects of air quality issues and continue to learn from my Board colleagues, staff, and stakeholders. The former ARB Chair, Dr. Alan Lloyd, and the former Cal/EPA Secretary, Terry Tamminen, served as inspirational role models. I have participated in several ARB workshops and technology conferences involving children's environmental health, environmental justice, greenhouse gases, and emission control technologies to learn more about socioeconomic and technological perspectives.

My goals involve applying my solid scientific/health background to the decisions and recommendations on important public health issues that come before the Board. I continue to keep myself current on air-pollution-related health work and

JUN 0 9 2005

findings that I share with staff and my Board colleagues. I regularly advise Board colleagues and staff about health-related presentations to the Board, such as the monthly Health Updates and ARB's Annual Research Program and types of projects. My scientific/public health advice is sought by staff and stakeholders when relevant regulatory and non-regulatory issues come before the Board, e.g., health effects from ozone and greenhouse gas emissions. I believe it is important for me to provide public health perspectives about important ongoing issues for the ARB that relate to climate change, air toxics, hydrogen and other promising alternative fuels, environmental justice, and children's health. These need to have outreach and public education to provide quality information for all citizens. I am also interested to learn more about economic analyses that attempt to relate benefits to costs (health, economic, social) such as those calculated for the Carl Moyer Program and diesel retrofit rules. The ARB should work more effectively with affected stakeholders and local air districts to better understand and resolve looming challenges related to fuel selection, agricultural emissions, and railways and ports (goods movement). As such, I hope to better understand, consider, and clarify issues brought before the Board, as I share my health-related interpretations and contribute to discussions in the policy-making process.

In summary, the ARB must remain an innovative leader in improving air quality for its citizens, protecting public health, and balancing potential economic issues that might affect the State's overall economic and social health. These goals should not be incompatible but are necessary and overlap.

2. How can the state achieve needed emission reductions if the soon to be largest emission sources (ocean-going ships and locomotives) are out of the control of your board?

This important area is an ongoing challenge and work in progress that will need to involve creative actions as well as a will to collaborate by stakeholders at different levels (local, state, federal, and international agencies; industry; and community). The ARB can definitely act as key motivating player by initiating ideas, plans, and actions that affect instate and out-of-state entities, e.g., the ARB recently required instate locomotives and switcher engines to use CARB on-road low-sulfur diesel fuel (ARB adoption in November 2005; effective January 1, 2007). The ARB is also reviewing other strategies to reduce locomotive and railyard emissions. A goods movement action plan is currently being developed by the Administration with input from the ARB to identify a comprehensive emission mitigation strategy. Cooperative agreements with the sources (line haul railroads and shippers) are a key part of this strategy. The limits of State authority in this issue may be probed and tested as part of this evolving process. Approximately one in five (21%) of the 170 million Americans who breathe unhealthful air reside in California (based on the federal 8-hour ozone standard). Only California has areas designated in the higher (more polluted) classifications, reflecting the severity of our State's air problem. Thus, it behooves us to use every pathway and tool at our disposal to influence national

and international groups and their actions. These include working with other states and countries, the California congressional delegation, and the US EPA. In summary, the ARB should continue to be a multi-agency (State, local, federal) leader and use every means possible to press our federal counterparts to act where the State and local air agencies cannot.

3. ***What does this mean for the State Implementation Plan (SIP)?***

The ARB will need to continue developing, adopting, and implementing programs to reduce emissions from all sources under its authority and to encourage other State, local, and federal agencies to act accordingly. The SIP is intended to protect all Californians from the harmful effects of air pollution. Thus, the US EPA, ARB, and local air districts need to cooperate on California's attainment strategy. Transportation officials also need to do their share as well so that infrastructure plans conform to the broader strategy. All responsible parties should be working together on an effective mix of control measures, e.g., regulatory programs, incentives, agreements, technology-advancing strategies, and innovative emission control technologies to provide additional and necessary emission reductions to meet our public health goals.

4. ***If the emission levels associated with goods movement cannot be lowered to meet health-based air quality standards for ozone and particulate matter, what would you recommend the Board do?***

My responses to questions 2 and 3 somewhat overlap with this response. Fundamentally, the current emissions from the goods movement must be reduced. There is no alternative since these emissions are already too high and exert a disproportionate impact on the Southern California Air Basin, in particular, on communities adjacent to ports, railyards, and major transportation corridors. I recently toured some affected communities in the Los Angeles area to observe firsthand the close proximity of residents and parks to railyard facilities. Thus, it is very plausible that exposures to source emissions can be very high and unhealthy for the community. Given this health risk, we should also acknowledge that the goods movement throughout the State is important to California's and the US's economy. Again, emission reduction must be the first priority, and strategies for good movement should be revised to reflect more intelligent and healthier decisions and actions. To accomplish this we need all stakeholders to work together and consider a thoughtful mix of regulatory actions, incentive programs, and agreements.

5. ***What is the status of the State Implementation Plan? What needs to be done to achieve attainment?***

The next planning cycle for the SIP is 2007/2008. The necessary strategies will be identified at that time. In the meantime, US EPA, ARB, and the local air districts will continue to adopt, implement, and enforce emission control measures consistent with prior SIP commitments.

6. ***How much of the State Implementation Plan relies on the "black box" or Section 182(e)(5)?***

Under federal law only "extreme" nonattainment areas (i.e., the South Coast AQMD and San Joaquin Valley) may include "black box" measures in their SIPs. Approximately 29% of the emission reductions fall under Section 182(e)(5) (the "black box") to be adopted post-2006 in the 2003 SIP for the South Coast AQMD. About 71% of the reductions come from a combination of adopted measures and near-term strategies to be developed by 2006.

Do you think that new technologies will provide the required emission reductions?

We need advanced technology and truly zero-emitting options, such as hydrogen fuel cells powered with renewable electricity. However, the more immediate problem is turning over the legacy fleet of vehicles and engines used throughout commerce. For that, we need regulations, incentives, and thoughtful investment programs. In this regard, I support the Carl Moyer Program and its expansion.

7. ***Do you believe that there may be a difference in health effects of the combustion of different fuels? If so, should your Board treat fuels that cause different health effects differently?***

The ARB evaluates a diverse number of fuels by examining emissions, toxicity, climate change effects, and multi-media impacts when looking at alternative fuels. The ARB also evaluates fuels and vehicles as a system, since the characteristics of one component may affect another in the same system. For example, low-sulfur diesel is needed to enable the effective use of some types of particulate traps. Conversely, low-volatility gasoline reduces the pressure on automotive evaporative control systems and results in fewer leaks to the atmosphere. Different tailpipe and evaporative emission control technologies are available or emerging. Ultimately, a systems approach to reducing emissions from combustion engines seems logical, utilizing advanced engine designs, integrated emission control technology, and low-polluting fuels.

Each type of fuel has advantages and disadvantages. Historically, ARB has set performance standards against which any fuel and or vehicle type may compete. California's current motor-vehicle emission standards are class specific but fuel neutral. The emission standards vary by vehicle or engine classification but are independent of the fuel on which the vehicle or engine is certified. In 2003, ARB and the California Energy Commission co-authored a report on petroleum dependency that, among other things, recommended a shift away from a purely fuel-neutral policy. Specifically, the report called for greater fuel diversity in California to increase the State's energy security, moderate price spikes, and advance environmental objectives. The Administration is currently evaluating how to effectuate that policy and how to balance fuel diversity against other societal goals.

8. **Is the Air Resources Board developing strategies for reducing greenhouse gases from stationary sources? If so, please describe those strategies.**

Governor Schwarzenegger issued Executive Order S-3-05 (June 1, 2005) establishing greenhouse gas (GHG) reduction goals for the State of California. Briefly, GHG emissions will be reduced to 2000 levels by 2010; to 1990 levels by 2020; and to 80 percent below 1990 levels by 2050. The achievement of the GHG reduction goals will eventually need contributions from both mobile and stationary sources. The ARB has been actively involved in the regulation of greenhouse gas emissions from mobile sources (AB 1493 (Pavley), Chapter 200). The ARB is working with other State agencies to develop strategies to achieve GHG reduction goals and is a charter member of the Governor's Climate Action Team established in March 2005. The most effective reduction strategies for stationary sources are increased energy efficiency of all kinds, including lighting, heating, and manufacturing systems. California is already very energy efficient on a per capita basis.

9. ***Can you please describe the Administration's plan to reduce air pollution emissions by 50 percent? Could you specify the emission reductions anticipated in ozone, particulate matter, oxides of nitrogen and any other of the approximately 200 pollutants the Board has identified as air toxics?***

An overarching response is that the State ARB should reduce air emissions from all sources as much as possible. California is on the path to achieving the Governor's 50% goal for smog precursors (ROG and NOx) and for diesel particulate matter. For example, using the South Coast as an example, the 50% target for ozone precursor emissions is 940 tons per day. To date, adopted measures to achieve 514 tons per day are in effect. The ARB will be considering through 2006 new near-term strategies to further reduce these emissions. These strategies are outlined in ARB's "State and Federal Strategy for the California SIP" (2003) and ARB's "Diesel Risk Reduction Plan" (2000). The possible control measures will likely affect passenger vehicles, diesel trucks, off-road equipment, consumer products, and vapor recovery. Potential new port-related measures (not yet defined) will provide additional reductions. Local air districts may also contribute with their own rules to provide additional emission reductions. Additional longer-term measures will be developed for adoption after 2006 as part of the SIP process for the new 8-hour ozone and PM2.5 standards. ARB will work with our local and federal air agency partners to develop additional emission reduction strategies to be implemented by 2010.

10. ***Given that a large portion of air pollution in California is generated by federal sources, to what extent is the Governor's plan going to rely on air pollution reductions by the federal government? Will the Governor's plan rely solely on action by California regulators and by enacting 8legislation to achieve the full 50% reduction in air pollution?***

National and international sources (under federal jurisdiction) account for about 60% of diesel particulate matter and about 40% of sulfur oxide emissions. The primary federal emission sources are interstate trucks and off-road sources, i.e., ships, locomotives, aircraft, and preempted farm and construction equipment. The federal government must do its part to control air pollution or California will be unable to attain the national ambient air quality standards. The US EPA has made significant strides in setting standards for new diesel engines used in trucks, buses, construction, and farm equipment. The ARB is encouraging the US EPA to also adopt similar after-treatment based standards for new engines in marine vessels and locomotives. The US EPA is requiring lower sulfur diesel fuel (15 ppm) starting in 2006 for on-road and off-road vehicles, and in 2012 for locomotives and marine vessels (500 ppm).

The Governor did not rely on federal actions when setting the 50% goal for emission reduction. As a member of the ARB, I will seek to stimulate a federal response since public health and the environment would be best served by the most rapid progress possible at multiple governmental agency levels.

11. What specific steps would you recommend to achieve these reductions (50 percent target)?

The Carl Moyer Program has a successful track record in California. The establishment of a Carl Moyer-like program at the federal level would be useful to address existing sources under federal jurisdiction. It is my understanding that the level of federal investment in California needs to be $100-$200 million per year during the next decade to effect a meaningful contribution to a 50% emission reduction goal. The ARB will be evaluating the comprehensive attainment plans for each nonattainment area in California in late 2007 and early 2008. In the meantime, the Board has instructed staff to keep us regularly apprised of California's progress toward the Governor's 50% pollution reduction goal.

12. What strategies are being considered by your Board to deal with these sources (indirect and area wide sources) of air pollution?

The ARB has already adopted rules requiring a 50% emission reduction over uncontrolled levels for consumer products (example of an area source). More stringent standards will be considered by the Board later this year. The ARB has also regulated transportation refrigeration units (TRUs) that cause general air pollution while in transit and localized hot spots when loading and unloading at warehouse hubs.

13. Do you believe your Board should look at land use decisions that contribute to these types of air pollution?

The ARB has been active in environmental justice issues, including land use. The ARB has historically provided guidance for local planners and air districts regarding mitigation methods for indirect sources (facilities that generate traffic). Furthermore, in May 2005 the Board approved an Air Quality and Land Use

Handbook identifying the health risks posed by major freeways, other emission sources, and recommended setbacks, where feasible, to reduce these impacts. It became very clear that, during the public meetings and tours of affected communities, all stakeholders are required to work together to come up with viable and lasting solutions. The ARB also has approved a significant research project to identify and characterize disproportionate community impacts in California. The ARB also sponsors the Children's Environmental Risk Reduction Plan (ChERRP) pilot projects in Southern California.

14. Has the ARB reviewed any of the air quality aspects of the Frontier Transmission Line Project? Will the ARB be involved in the review of this project?

The ARB has not yet reviewed any of the air quality impacts from the Frontier Transmission Line Project. The Project is still in the pre-feasibility stage. It is my understanding that preliminary analyses to further define the project route and financing options, as well as to identify legal, regulatory, environmental, and other development issues are underway. No environmental documents providing project-specific details have been released for review at this time.

The ARB does not have the legal authority to establish air quality requirements for power plant projects being constructed in other states. However, in recent years, ARB was successful in promoting clean technologies in power plants outside California borders as a commentor on DOE's environmental review of a US-Mexico transmission line project. The joint efforts of ARB, the local air district, and other stakeholders resulted in the installation of state-of-the-art emission controls in natural gas-fired power plants proposed for construction in Mexicali, Mexico. These power-generating sites would export all or part of their electricity to the US via a cross-border transmission line.

15. Is ARB looking into this project's potential for creating large amounts of air pollution from the burning of coal?

Without definitive details regarding each power plant that will connect into the proposed transmission line, ARB cannot accurately estimate the potential air quality impacts from the project at this point in time. The role of the ARB should advise and assist the lead State agencies in determining how California's participation in this transmission line would affect emissions of both traditional pollutants (such as NOx and SOx) and global-warming gases. The ARB should assist in identifying measures that can minimize adverse impacts from extensive use of out-of-state electricity from coal-fired power plants. The news article from the *San Francisco Chronicle* (May 15, 2005) about the Frontier Transmission Line Project leads me to several concerns and realities. The additional electrical energy from this new source is needed for our growing California population and economy. Although relatively little emissions will occur in the State, air pollution will occur in the locales of the power plants and perhaps beyond. Obviously much has to be done and discussed. However, the situation with coal-powered plants is not all-or-none or black-and-white. Technology exists for coal-powered

plants to operate with near-zero emissions (e.g., turning coal into gas). This will add about 25% to the costs of building a plant, and none of the current coal-based proposals plan on using advanced technology. The ARB, other State agencies, industry, environmental groups, and the US DOE and EPA need to review possible strategies (including incentives and cost-effective technology) and the use of other power sources such as natural gas, geothermal-power (steam), solar, and wind to diversify the energy portfolio.

Thank you for your consideration.

Sincerely,

Henry Gong Jr MD

Henry Gong, Jr., M.D.
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June 8, 2005

Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814-4900

Attention: Nettie Sabelhaus, Appointments Director

Re: Lydia H. Kennard – Confirmation Hearing for Air Resources Board

Dear Senator Perata:

I am very honored to have been appointed by Governor Arnold Schwarzenegger to a position on the California Air Resources Board (CARB). In serving on this board for the past several months in advance of my official Senate confirmation, I have been appreciative of the opportunity to serve the citizens of the State of California in this important capacity. If confirmed, I pledge to continue to commit my full energy and expertise to the mission of CARB.

In connection with the confirmation process, I have received your letter of May 17, 2005 requesting a response to several questions posed by the Senate Rules Committee in advance of the June 22, 2005 confirmation hearing. Below I have provided my response to those questions. Additionally, I am enclosing a copy of my most recent Form 700.

Question:

1. *What do you hope to accomplish during your tenure as a member of the California Air Resources Board? What goals do you have for the board and how will you accomplish them?*

My background is in law and aviation management. I served as Executive Director of Los Angeles World Airports (LAWA) from 1999 through 2003. In that capacity I was responsible for four airports, including Los Angeles International Airport (LAX). As a result, I worked closely with CARB on a number of air quality compliance issues. I am very proud of my efforts to institute several highly effective and innovative measures to help the airport system be a leader in reducing air emissions.

During my tenure at LAWA, nearly 40 percent of the airports' fleet vehicles were alternative-fueled. Other achievements include state-of-the-art, high technology LNG/CNG fueling stations at LAX, a CNG fueling station at Van Nuys Airport, and 32 public access electric vehicle charging stations at LAX. LAWA also worked in partnership with the airlines to electrify aircraft loading gates to reduce air pollution caused by the idling of aircraft while refueling and maintenance. All of our achievements in reducing the airports' contribution to air pollution was done within the context of a

careful balancing of these very important air quality goals with the economic costs, both direct and indirect, to the industries impacted by these initiatives.

While at LAWA, I also initiated the study of the sources of air pollution around LAX. One of the major difficulties in moving this study forward was the identification of an impartial and credible sponsor. I am pleased that CARB, in conjunction with UCLA, has now undertaken the study "Monitoring and Modeling of Ultrafine Particulates and Black Carbon at the Los Angeles International Airport". I look forward to assisting staff in providing access to and cooperation by the airlines in this important study.

In a broader context, I would like to continue to be engaged in CARB's initiatives regarding the research and policy implications of land use decisions as they relate to air quality hazards. As a graduate student in City Planning at the Massachusetts Institute of Technology, I was very involved in the research undertaken by a distinguished MIT professor on the siting of undesirable uses in urban areas. I remain very interested in this subject and hope to assist the CARB staff as they develop communication tools, institutional acceptance and, hopefully, regulatory mechanisms to tackle this very important issue.

2. *How can the state achieve needed emission reductions if the soon to be largest emission sources are out of the control of your board?*

California has been a national and international leader in emission reduction policies. This legacy has provided both respect and credibility among governmental agencies at all levels. Through CARB, California can continue to influence the decisions of other entities, both public and private, even those outside of CARB's control.

3. *What does this mean for the State Implementation Plan?*

It is clear that the achievement of the California's air quality goals is not a state issue alone. The attainment of the goals set in the State Implementation Plan will require a high level of cooperation among U.S. EPA, CARB and the local air districts.

4. *If the emission levels associated with goods movement cannot be lowered to meet health-based standards for ozone and particulate matter, what would you recommend the board do?*

The reduction of emissions associated with goods movement is a complex and difficult undertaking. Nonetheless, these levels must be reduced. It will take a continual and committed effort on the part of U.S. EPA, CARB and the local air districts to effectuate effective control measures. I do not believe that these emissions levels can be effectively contained through the use of regulatory mechanisms alone. CARB should continue to work with the various industries involved to develop incentive programs and agreements to augment the regulatory tools.

5. *What is the status of the State Implementation Plan? What needs to be done to achieve attainment?*

CARB, in association with U.S. EPA and the local air districts, will continue its mission to develop, implement and enforce the air quality goals set forth in the current State Implementation Plan which is in effect until the year 2007. The next planning cycle for the SIP will be 2007/8. I believe that it is imperative that CARB build upon the current SIP and adopt even more aggressive standards in the upcoming plan. Moreover analysis will need to be undertaken to evaluate which emission goal measures were most effective and those that were least effective in attaining the goals set forth in the current SIP. Adjustments, additions, and deletions will need to be made accordingly.

6. *How much of the State Implementation Plan relies on the "black box" or Section 182(e)(5)?*

Only two local districts, South Coast AQMD and San Joaquin Valley may include "black box" measures in their SIP. Nearly 29 percent of the reductions for these two "extreme" nonattainment areas, as defined by federal law, will qualify under the "black box" provisions that will allow for adoption post-2006. As a public policy matter, I believe that future SIPs should seek to reduce the number of "black box" provisions for these extreme nonattainment areas. As a result, significant additional focus will need to be provided to these districts in the way of innovative control measures, industry incentives, and possible subsidies so that these districts can more effectively meet emission control goals.

Do you think that new technologies will provide the required emission reductions?

Absolutely. Advances in technologies are occurring on an on-going basis. Moreover, the global interest and imperative to control emissions is spawning entrepreneurial innovations in this arena. Nonetheless, the development of the new technologies and the subsequent commercialization of these technologies into the marketplace is a slow process. Moreover, the retrofitting or retirement of existing equipment to accommodate these new technological innovations typically takes several years

7. *Do you believe that there may be a difference in health effects of the combustion of different fuels? If so, should your board treat fuels that cause differing health effects differently?*

The research and science of the health impacts of various fuels is evolving. Over the past few decades the knowledge base regarding the health effects of different fuels has grown exponentially. As a result of this increased knowledge, CARB must continue to evaluate the health impacts of each of these fuels individually. Each fuel will measure differently with respect to toxicity, multi-media impacts, and climate change effects. Although CARB has historically set performance standards against which any vehicle or fuel can compete, the board also recommended in 2003 a policy shift away from fuel neutrality to encourage more fuel diversity (AB 2076: Reducing California's Petroleum

Dependency. The Administration is currently evaluating the full impact of such a policy shift.

8. *Is the Air Resources Board developing strategies for reducing greenhouse gases from stationary sources? If so, please describe those strategies?*

As you are well aware, the Governor has issued an order establishing greenhouse gas reduction goals for the state. CARB voted last year to reduce greenhouse gas emissions from California's largest source – motor vehicles. Although the state has achieved a high level of energy efficiency for stationary sources such as lighting, heating, and manufacturing systems, I nonetheless believe that it is important for CARB to continue to make incremental improvements in the reduction of greenhouse gases from stationary sources as well.

9. *Can you please describe the administration's plan to reduce air pollution emissions by 50%? Could you specify the emission reductions anticipated in ozone, particulate matter, oxides of nitrogen and any other of the approximately 200 pollutants the board has identified as air toxics?*

The Governor currently has a goal of reducing smog precursors (ROG and NOX) and diesel particulate matter by 50 percent. CARB is working hard to develop programs to meet this goal. These programs are contained in the 2003 State Implementation Plan as well as in CARB's Diesel Risk Reduction Plan. Additional mechanisms for emission reductions will be developed in the post-2006 time frame as part of the SIP process for the new 8-hour ozone and PM 2.5 standards.

10. *Given that a large portion of the air pollution in California is generated by federal sources, to what extent is the Governor's plan going to rely on air pollution reductions by the federal government? Will the Governor's plan rely solely on action by California regulators and by enacting legislation to achieve the full 50% reduction in air pollution?*

One of the challenges facing California's ability to reduce emissions from existing sources under federal jurisdiction is funding. CARB staff estimates that approximately $100 to 200 million will be needed per year for the next decade to meet the federal air quality standards. Although the Governor did not rely on federal actions when setting the state's 50 percent goal, a significant investment on the part of the federal government will have a major impact on California's ability to attain the national ambient air quality standards. CARB should continue to work with U.S. EPA staff to assist them in creating innovative funding programs, like the California's Carl Moyer Program, to achieve target emission reductions from federal sources.

11. *What specific steps would you recommend to achieve these reductions (50 percent target)?*

CARB will monitor progress toward the 50 percent target through regular staff updates. Moreover, comprehensive attainment plans for each nonattainment area in California will be evaluated by CARB in 2007/8.

12. *What strategies are being considered by your board to deal with (indirect and area wide sources) of sources air pollution?*

Rules have already been adopted by CARB requiring a 50 percent emissions reduction over uncontrolled levels. Staff anticipates that more stringent standards will be presented to the Board of consideration later this year.

13. *Do you believe your board should look at land use decisions that contribute to these types of air pollution?*

The Air Quality and Land Use Handbook, approved by CARB in May of this year, is an important milestone in CARB's efforts to educate planners, developers and local governments about the hazards of siting hazardous uses adjacent to residential uses, schools, hospitals, etc. Although advisory only, it provides solid guidance on recommendations for setbacks and alternative sitings where feasible to reduce the impacts of these incompatible uses.

14. *Has the ARB reviewed any of the air quality aspects of the Frontier Transmission Line Project? Will the ARB be involved in the review of this project?*

Although CARB has no authority to establish air quality requirements for power plants located in other states, CARB has provided comments on the environmental review of a US-Mexico transmission line project. This engagement in the environmental review process resulted in emissions control standards being installed on natural gas-fired power plants proposed for construction in Mexicali, Mexico. Similarly, CARB staff anticipates that they will have an opportunity to comment on the air quality impacts of the Frontier Transmission Line Project once the environmental documentation is available for review.

15. *Is the ARB looking into this project's potential for creating large amounts of air pollution from the burning of coal ?*

CARB remains very interested in understanding the potential air quality impacts of the Frontier Transmission Line Project. In particular, CARB staff would work with the lead state agencies on this project to determine the effect of emissions such as NOx, SOx and global warming gases from this project. In addition to understanding the risks associated with these emissions, CARB's role will be to identify appropriate mitigation measures for emissions control.

In closing, I hope that the answers provided above adequately address the questions posed. Additionally, I am available to provide any further information as required in support of the confirmation of my appointment to the California Air Resources Board.

Sincerely,

Lydia H. Kennard
1930 Mendocino Lane
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626 797-5959

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CITY OF RIVERSIDE

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June 10, 2005

Ms. Nettie Sabelhaus, Rules Appointment Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

RE: Confirmation of Ronald O. Loveridge as a Member of Air Resources Board

As requested, I offer the following responses to the fourteen questions presented in your May 17th letter. I would be delighted to offer additional comments, for all my answers are brief summaries. I look forward to my confirmation and serving on the California Air Resources Board. Thank you for your consideration.

Question #1--What do you hope to accomplish during your tenure as a member of the California Resources Board? What goals do you have for the board and how will you will accomplish them?

"I represent the South Coast Air Quality Management District (SCAQMD) on the Air Resources Board. As a member of the SCAQMD Board, I have represented the cities of Riverside County for over ten years.

As Mayor (1994-), Council member (1979-1994), Environmental Protection Commission member (1970-1979), and as a UCR professor of political science (1965-), I have led, participated, studied, and taught the quest to clean the air in Southern California.

For over 40 years, I have committed myself to ways to clean the air, for health priorities, quality of life, as well as economic benefits. On the Air Resources Board, I will represent the 18 million people who live--and breathe--in southern California. I will do my homework. I will listen. I will pay attention to good science. And I will carefully evaluate difficult policy choices before the Air Resources Board, looking toward how we can improve air quality for all of California.

This week ended a UCR course (Political Science 170) I taught on the Goods Movement in Southern California. Final conclusion--we must find ways to reduce air pollution (such as "No Net Increase") and at the same time to expand the infrastructure for freight and trucks."

Question #2--How can the state achieve needed emission reductions if the soon to be largest emission sources are out of the control of your board?

"As a state, we need to change selected rules of the game. We need to work with our Congressional delegation. For example, we did so many years ago when the Dingell amendment was defeated and California retained his exemption when the first Clean Air

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legislation was passed by Congress.

We need to make our case for change in the rules, publicly. deliberately, and effectively.

Also, we need to test the rules the game as well as look for cooperative/voluntary agreements, such as with line haul railroads and shippers."

Question #3--What does this mean for the State Implementation Plan?

"Big picture--EPA, ARB, and the local air districts all need to cooperate and work together on key strategies to attain clean air. At the same time, transportation officials need to do their share as well as so that infrastructure plans connect to the broader strategies."

Question #4--If the emission levels associated with goods movement cannot be lowered to meet health-based standards for ozone and particulate mater, what would you recommend the board do?

"Briefly stated, the emissions from the goods movement must be reduced. Strategies are available--a mix of regulatory actions, incentive programs, and agreements. "No Net Increase" report on the LA port is an example of such an approach."

"As to the Goods Movement in Southern California, we know the context, we know the benefits as well as the costs, and we know the solutions. It is now time for regulatory agreements and funding for improvements, air quality and infrastructure."

Question #5--What is the status of the State Implementation Plan? What needs to be done to achieve attainment?

"Let me focus on what needs to be done rather than the status of the SIP (the upcoming planning process is for 2007/2008).

What needs to be done should take the following directions: 1) Full implementation of cost-effective and available technology; 2) Development of new cost-effective air pollution control technologies ; 3) Implementation of mechanisms (carrot and sticks) to accelerate replacement of older, higher-pollution engines with new low-emission alternatives; 4) Better coordination with the federal government and encouragement to pursue necessary reductions within its purview; 5) Better coordination with state energy policies to ensure an adequate low-pollution supply for the future, using a mix of traditional and renewable energy sources; and 6) Appropriate land-use and transportation polices that consider air quality impacts, along with mobility, affordable housing, and economic growth within the state."

Question #6--How much of the State Implementation Plan relies on the "black box" or Section 182(e)(5)? Do you think that new technologies will provide the required emission reductions?

"The "black box" or Section 182(e)(5) pertains only to extreme non-attainment areas (to wit, South Coast and San Joaquin for the one-hour ozone standard).

The 2003 AQMP for the SCAQMD originally designated a black box of 265 tons per day for VOCs and 180 tons per day of NOx. The SCAQMD's share of the black box was 31 tons of VOCs. The remaining emissions were designated to the ARB. At the adoption hearing, ARB committed to move 120 tons per day into short-term measures.

It is very doubtful that new technologies will allow the SCAQMD to achieve the new federal eight-hour ozone standard by 2024 (latest allowable date with time extensions.) There will be significant NOx and VOC black box reductions required beyond those already identified to achieve the new standards. The legislature and governor's approval of ten-year Moyer funding and $2 dollar vehicle registration monies to facilitate early cleanup of dirty engines will play a critical role in near and mid-term progress. It is important to emphasize that engine fleet turnover is critical to success, in addition to new technology."

Question #7--Do you believe that there may be a difference in health effects of the combustion of different fuels? If so, should your board treat fuels that cause differing health effects differently?

"Available date proves a clear inference for different health effects from the combustion of different fuel/exhaust control technologies. To wit, uncontrolled diesel exhaust designated carcinogen represents 70% of ambient carcinogenic risk in ambient environment.

The ARB examines emissions, toxicity, climate change effects, and multi-media impacts when looking at different fuels. Fuel types have different advantages and disadvantages.

In 2003 the ARB and the Energy Commission co-authored a report on petroleum dependency that, among other things, recommended a shift away from a purely fuel neutral policy. Specially, that report called for greater fuel diversity in California to increase the state's energy security, moderate price spikes, and advance environmental objectives. The Administration is currently evaluating those recommendations and how to balance fuel diversity against other societal goals."

Question #8--Is the Air Resources Board developing strategies for reducing greenhouse gasses from stationary sources? If so, please describe those strategies.

"The governor issued an executive order (S-3-05) establishing greenhouse gas reduction goals for the State of California. The ARB is working with other state agencies to achieve these coals. The most effective strategies for stationary sources are increased energy efficiency of all kinds, including lighting, heating, and manufacturing systems.

Stationary source strategies have been implemented at the SCAQMD since the adoption of an overarching policy in April 1990. SCAQMD rules specially phased out global warming substances as a compliance option from nearly all stationary source VOC regulations. The SCAQMD also adopted source-specific regulations, required best management practices, as well as phase-out of global warming gases, for automobile air conditioner repair, large refrigeration unit (i.e. super market units) repair and/or hospital tool sterilization units. Such requirements were established ahead of action by the federal government for these source categories."

Question #9--Can you please describe the administration's plan to reduce air pollution emissions by 50%. Could you specify the emission reductions anticipated in ozone, particulate matter, oxides of nitrogen, and any other of the approximately 200 pollutants the board has identified as air toxics?

"As explained by ARB, California is on the path to achieving the Governor's 50 percent goal for smog precursors (ROG and Nox) and for diesel particulate mater. New near-term strategies to reduce these emissions are being developed for consideration by the Board through 2006. Additional strategies will be developed for adoption post-2006 as part of the SIP process for the new 8-hour ozone and PM 2.5 standards. Personal comment--50% reduction in air pollution emissions by 2010 is a defining/optimistic policy goal, albeit very

difficult to achieve."

Question #10--Given that a large portion of air pollution in California is generated by federal sources, to what extent is the Governor's plan going to rely on air pollution reductions by the federal government? Will the governor's plan rely solely on action by California regulators and by enacting legislation to achieve the full 50% reduction in air pollution.

"Obviously, the federal government must step up and do its part to control air pollution in California. EPA has made great strides in setting standards for new diesel engines. They now need to adopt similar new engine standards for marine and locomotive engines. What's also needed is a Carl Moyer like program at the federal level to address existing sources under federal jurisdiction. To be significant, the level of federal investment in California needs to be in the range of $100-200 million dollars per year for the next decade--these are very high yet necessary numbers."

Question #11--What specific steps would you recommend to achieve these reductions.

"The Board will be evaluating the comprehensive attainment plans for each nonattainment area in late 2007 and early 2008. From the SCAQMD perspective, steps could include development of innovative approaches to facilitate early retirement of engine/vehicles, fuel quality improvements, especially for oceangoing ships, and further evaluation of new fuels, including bio-diesel."

Question #12--What strategies are being considered by your board to deal with these sources of pollution (indirect and area wide)?

"For consumer products (an area source), ARB has already adopted rules requiring a 50 percent emission reduction over uncontrolled levels. More stringent standards will be considered by the Board later this year. The staff indicates that the ARB has also regulated transportation refrigeration units that cause general air pollution while in transit and localized hot spots when loading and unloading at warehouse hubs."

Question #13--Do you believe your board should look at land use decisions that contribute to these types of air pollution?

"This spring I joined with other board members in approving an Air Quality and Land Use Handbook identifying the health risks posed by major freeways ands recommended setbacks, where feasible, to reduce these impacts. Personally--I support, for example, the state mandated distance requirement for locating new public schools near freeways."

Question #14--Has the ARB reviewed any of the air quality aspect of the Frontier Transmission Line Project? Will the ARB be involved in the review of this project?

"This issue has not been before the Board. As I understand, the ARB has not reviewed any of the air quality impacts from the Frontier Transmission Line Project, and will not do so until environmental documents are released for review."

Question #15--Is The ARB looking into this project's potential for creating large amounts of air pollution from the burning of coals?

"Staff reports that the ARB role will be to assist the lead state agencies in determining how California's participation in this transmission line would affect emissions of both traditional pollutants and global warming gasses. Personally--I have not reviewed/studied this Project."

Sincerely,

Ronald O. Loveridge
Mayor

June 8, 2005

Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814-4900

Attention: Nettie Sablehaus

Re: PATRICIA SALAS PINEDA – Confirmation Hearing for Air Resources Board

Dear Senator Perata:

I am writing to you in regards to the confirmation hearing on my appointment as a member of the California Air Resources Board ("CARB") which is scheduled for June 22, 2005. As you may know, I am a registered Democrat who was appointed by Governor Schwarzenegger to CARB on August 13, 2004. I feel honored and privileged to be able to serve in this capacity.

I worked at New United Motor Manufacturing, Inc ("NUMMI") from August 1984 to September 2004, most recently serving as General Counsel and Vice President for Human Resources and Government Affairs. As of September 2004, I moved to Toyota Motor North America where I serve as General Counsel and Group Vice President, Corporate Communications. For most of my career at NUMMI, I had responsibility for environmental affairs. During that time, NUMMI forged positive relationships with the local community, the city of Fremont, the Bay Area Air Quality Management District and several environmental groups, including the Sierra Club, the Environmental Defense Fund, Citizens for a Better Environment and the California League of Conservation Voters. In fact, when NUMMI expanded its facility to include a truck line in 1991, Citizens for a Better Environment submitted a letter of support. I have always felt proud of this outcome.

As a private citizen, I believe in the need to protect and improve our air quality and environment and to raise the awareness in those communities that suffer unnecessarily from inferior air quality. As a mother of a 12-year old with asthma, I am acutely aware of the harmful effects of polluted air.

As a business person, I believe in a responsible balance between protecting and improving our air quality and mandating emission control technologies. I strongly believe that businesses must do their part in making our world a better place to live.

I will now provide you with answers to the questions posed in your letter of May 17, 2005:

JUN 1 0 2005

1) What do you hope to accomplish during your tenure as a member of the California Air Resources Board? What goals do you have for the board and how will you accomplish them?

Most importantly, I want to ensure that viable regulations and policies are adopted that will improve the air quality of California now and in the future. CARB can provide leadership not only to California but also to the world. We must set the example and educate our residents. I want to ensure that *all* Californians are able to breathe clean air. In doing so, we must work with all relevant state and federal regulatory bodies.

2) How can the state achieve needed emission reductions if the soon to be largest emission sources are out of the control of your board?

First of all, I believe CARB should maximize its state authority. It should also use its status as an international leader in regulating air quality to influence what happens in this country and the world. Through regulations and policies, the board can encourage and incentivize best practices and technologies that promote cleaner air for our growing state and world-wide population. We must do all we can now to influence air quality improvements in those California communities affected by pollution in the air basins and the busy freeway corridors and port areas. The board has observed these unacceptable conditions during recent environmental justice tours. The board must also grasp what is achievable and viable shorter term and for the longer term. We must educate ourselves on alternative and improved technologies that will ultimately positively impact our state and world. Finally, we must work cooperatively with national and international regulatory bodies, including U.S. EPA.

3) What does this mean for the State Implementation Plan?

In order to effectuate the State Implementation Plan, CARB must develop working alliances with U.S. EPA and local air districts and influence their actions. We must also ensure that manufacturers and transportation officials do their part.

4) If the emission levels associated with goods movement cannot be lowered to meet health-based standards for ozone and particulate matter, what would you recommend the board do?

As I mentioned previously, the board must encourage and incentivize alternative technologies that are viable and that will effectively reduce pollution. We must also work to ensure that appropriate national, state and local regulatory actions are taken.

5) What is the status of the State Implementation Plan? What needs to be done to achieve attainment?

The new planning cycle for the SIP will occur in 2007 and 2008. I would expect that during the new planning cycle, new and necessary strategies will be identified. Until then, all relevant regulatory bodies, including CARB, should continue to adopt and implement emission controls that are designed to achieve the SIP.

6) How much of the State Implementation Plan relies on the "black box" or Section 182 (e) (5)? Do you think that new technologies will provide the required emission reductions?

It is my understanding that under federal law only extreme areas that are non-attainment (such as the San Joaquin Valley and the South Coast district) can utilize the black box. As to new technologies, I believe new technologies can provide significant emission reductions. We should encourage and incentivize new technologies such as the hybrid and fuel cell technologies. We should provide incentives to consumers and manufacturers to eliminate the old technology vehicles and engines. In other words, get them off the road.

7) Do you believe that there may be a difference in health effects of the combustion of different fuels? If so, should your board treat fuels that cause differing health effects differently?

CARB should continue to study the health effects of alternative fuels and how these fuels interact with different kinds of vehicle engines and systems so we have a better understanding of the advantages and disadvantages. I don't think CARB should necessarily dictate technologies but rather should establish performance or emission standards that must be met by all manufacturers, technologies and fuels.

8) Is the Air Resources Board developing strategies for reducing greenhouse gasses from stationary sources? If so, please describe those strategies.

The Governor recently announced that his administration will reduce air pollution emissions by 50% in 2010. CARB is currently assessing strategies for effectively reducing CO2 from stationary sources. Also, CARB is a member of the Governor's "Climate Action Team". To achieve the goal, greater energy efficiency must be encouraged from stationary sources.

9) Can you please describe the administration's plan to reduce air pollution emissions by 50%? Could you specify the emission reductions anticipated in ozone particulate matter, oxides of nitrogen and any other of the approximately 200 pollutants the board has identified as air toxics?

Through the efforts of CARB and other regulatory bodies, California is progressing towards achieving the Governor's 50% goal for diesel PM and smog precursors. However, further strategies must be developed near and longer term to ensure the proposed reductions are in fact realized.

10) Given that a large portion of air pollution in California is generated by federal sources, to what extent is the Governor's plan going to rely on air pollution reductions by the federal government? Will the Governor's plan rely solely on action by California regulators and by enacting legislation to achieve the full 50% reduction in air pollution?

California regulations must work together with federal regulations to reduce pollution emissions by 50%.

11) What specific steps would you recommend to achieve these reductions?

I would ask staff to educate the board on California's progress toward the 50% reduction goal and to work with the board in evaluating and developing attainment plans for each non-attainment area.

12) What strategies are being considered by your board to deal with these sources of air pollution?

CARB is regulating consumer products and transportation refrigeration units that contribute to indirect and area-wide pollution. The board will review more stringent standards for consumer products later this year.

13) Do you believe your board should look at land use decisions that contribute to these types of air pollution?

I believe CARB should provide well-researched guidance as it is doing in the Air Quality and Land Use handbook which was approved this spring. I attended a public hearing on the handbook during which much public support and appreciation were expressed. I believe there could be better coordinated and informed land use decisions.

14) Has the ARB reviewed any of the air quality aspects of the Frontier Transmission Line Project? Will the ARB be involved in the review of this project?

CARB has not reviewed any of the air quality aspects of the Frontier Line Project. It is still unclear to me what role CARB can play. Perhaps CARB can influence the project as a leader and advocate of clean technologies. As you know, we do not have authority to regulate power plants being constructed in other states. However, we look forward to obtaining more information on this project.

15) Is the ARB looking into this project's potential for creating large amounts of air pollution from the burning of coal?

It is difficult to estimate the project's potential for creating significant air pollution without more information. CARB may be able to comment further once more information is obtained.

In closing, I hope I have given you a better sense of who I am and my commitment to improving the air quality in California and the world. I hope I have adequately answered your questions. In addition to several letters of support that will be sent to you separately, I wanted to share with you that I met with Bill Magavern of the Sierra Club and he authorized me to let you know that the Sierra Club does not oppose my confirmation.

Finally, I wish to thank you for your consideration of my application. If I am confirmed, I commit to do my best to protect and improve the air quality for all Californians.

Sincerely,

Patricia Salas Pineda
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Lafayette, CA 94549

(925) 938-0510

cc:
The Honorable Jim Battin, Vice Chair
Senate Rules Committee
State Capitol, Room 3067
Sacramento, California 95814

The Honorable Roy Ashburn
Senate Rules Committee
State Capitol, Room 5094
Sacramento, California 95814

The Honorable Debra Bowen
Senate Rules Committee
State Capitol, Room 4040
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The Honorable Gilbert Cedillo
Senate Rules Committee
State Capitol, Room 5100
Sacramento, California 95814

Ms. Nettie Sabelhaus
Appointments Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814

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June 15, 2005

Honorable Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 205
Sacramento, CA 95814

RE: Rex S. Hime, California Exposition and State Fair Board Appointment

Dear Senator Perata:

Pursuant to your request please find enclosed for the use of the Senate Rules Committee a brief statement outlining my short and long-term goals for the California Exposition and State Fair as a member of the Board.

At the 2005 Board and Executive Staff retreat held in early January the goals and objectives of the California Exposition and State Fair were discussed. The mission is to create a California experience reflecting the interests and diversity of its people, industries, products and the trends shaping its future. Ensuring implementation of the vision and the mission during my term, are I believe key to the continued success of Cal Expo.

The operations and management guides, established to provide state oversight nearly 40 years ago, are not only not applicable to the operations of a year round entertainment and conference venue but serve as a costly burden. In order for the State Fair to survive as an integral part of the crown of California we must be able to not only be competitive in the entertainment marketplace but continue to grow as a meeting and conference site. As such significant reforms need to be enacted at both the legislative and executive levels of government. Working towards achieving these reforms are part of my long term goals.

Customer service, safety and quality- must continue to be emphasized and reflect my short-term goals. We must continue to keep the operation of Cal Expo/State Fair at a profitable level with a healthy yearly growth, increasing paid attendance, while providing new, exciting and attractive events that can be enjoyed by all aspects of California's population.

This year we are opening the State Fair a week earlier in order to be operating while school districts have not reopened for the year. New programs aimed at attracting visitors to the State Fair throughout the week in addition to our high attendance weekends is a high priority for the coming year with our goal of over one million paid and satisfied visitors coming to Cal Expo and the positive economic impact this has on the region. As such we must continue to plan for the future and provide for the appropriate infrastructure improvements that must be made.

Received 06-15-2005 03:36pm From-0000000000 To-SENATE RULES COMMITE Page 002

Senator Perata Correspondence
- Page Two -

Building further on the success of making the Fair a multi-cultural event every day as opposed to the individual cultural days must be continued. Involving all of California's disparate population and exposing it to the wealth of diversity must be continued as the State Fair tolls to be the people's fair.

All of the above are issues that I feel I can positively impact in my role as a member of the Board and also as the Chair of the Board.

I have also been deeply involved in moving forward with a proposal for the joint environmental use and water purification efforts of the Bushy Lake area. An innovative program that would save ground water, clean storm water run-off and prevent direct pollution of the American River that has been endorsed by the local environmental representatives will continue to receive a great deal of my attention and action.

Thank you for your time and consideration.

Sincerely,

Rex S. Hime

MARIAN BERGESON
Newport Beach, California

June 7th, 2004

Honorable Don Perata
Chairman Senate Rules Committee
State Capitol, Sacramento, 95814

Dear Senator Perata:

Thank you for the opportunity to comment on your questions prior to my hearing for confirmation to the California Transportation Commission.

1. STATEMENT OF GOALS:

I am honored to be appointed by the Governor to the California Transportation Commission. During my tenure in the State Assembly and State Senate, I was active in local government and transportation issues. As a former Orange County Supervisor, I was involved in regional transportation planning. I have a unique perspective to the allocation of transportation dollars. My goal is to use my experience to build upon regional transportation planning to build a complete transportation network that delivers projects in a timely fashion; That maximizes dollars through partnerships with all levels of government to assure that our transportation dollars are efficiently and effectively utilized in meeting the social, environmental and economic needs of the State.

Critical to this is a close working relationship with the Legislature, Cal Trans, Secretary of Transportation and Housing and the Governor...seeking solutions to long-term funding for transportation needs. CTC needs to have a strong connect with the actions of the Regional Agencies, Legislature and the Federal Government.

2. TO WHAT EXTENT DOES THE GOVERNOR'S MAY REVISE BUDGET ADDRESS CALIFORNIA'S SERIOUSLY CONSTRAINED AND UNSTABLE TRANSPORTATION FUNDING OVER THE LONG TERM ?

The Governor's revised budget and the actions taken by the Senate and Assembly sub-committees provides a necessary good start for addressing the impacts of the state's deficit on California's transportation system. (Restoring Prop 42 funding for the next fiscal year and repay past loans in tribal gaming revenue or in equal installments over a 15 year period.) These proposals, however, do not fully address the costs associated with earlier diversions of transportation funding. These costs include the decrease in the spending power of the diverted funding and the increase in the cost of goods and services that were to be purchased with these funds.

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The May Revise also proposes to protect Prop 42 from diversions after the fiscal year 2006-07, thus leaving open the possibility of another diversion during fiscal yrs 2006-07. The future protection of Prop 42 does provide some stability for transportation funding in the future, however, the possibility of another diversion presents the same dilemmas posed by earlier diversions.

3. WITH RESPECT TO THE PROPOSED CONSTITUTIONAL AMENDMENT, DO YOU THINK IT IS A GOOD POLICY TO APPLY A SPENDING CAP TO SPECIFIC FUNDS DEDICATED TO TRANSPORTATION?

As a transportation advocate, it concerns me that the possible reductions in the amount provided to transportation may have the same effect as a diversion. Stable Prop 42 funding is necessary for specific projects and in some cases, local agencies have advanced funds for these projects relying on repayment from Prop 42 funds. As long as Prop 42 funds are diverted or reduced, these transportation projects are subject to costly delays or termination and, in some cases, the local agencies may have to use local funds that would have gone to other scheduled transportation projects.

However, I do understand, that you cannot just look at the proposed constitutional amendment without looking at all aspects of State Government. California clearly has a structural budget crisis.....if you take any one source off the table that only means larger cuts for equally important segments of government.

4. GIVEN THE CONCERNS OUTLINED ABOVE REGARDING THE IMPACTS OF THE GOVERNOR'S PROPOSED CONSTITUTIONAL AMENDMENT ON TRANSPORTATION FUNDING, HOW WOULD YOU PROPOSE TO REMEDY THESE SHORTCOMINGS?

Budget stability throughout State government is among the most important challenges we face. We will never have stability in funding in transportation, education, health and welfare or any segment of government until we deal with the structural imbalance.

I feel that investment in transportation infrastructure is of the highest priority for investment. Failing to make this investment not only stalls commuters but also slows the economy....further exacerbating our problems.

The proposed constitutional amendment provides some interesting approaches to tackling both deficits and the structural flaws that give rise to these deficits. These approaches are best viewed as a starting point in need of further refinement if a lasting solution that reduces the deficit and increases revenues is to be proposed.

Attention should be given to greater utilization of user-based funding, using revenue bonds to expedite project delivery. Revenues derived from fuel should be dedicated to transportation. We must recognize the relationship between movement of people and

goods and revenues from fees as well as sales and income taxes, these decisions based on carefully crafted long-term strategies.

5. WHAT IF THE INDIAN GAMING REVENUES ARE NOT FORTHCOMING, DUE TO LEGAL CHALLENGES OR NOT BEING MARKETABLE FOR BOND ISSUANCE? WHAT OPTIONS ARE AVAILABLE TO MOVE THE GAMING MONEY TO TRANSPORTATION IF THE BOND ISSUANCE IS DELAYED INDEFINITELY?

This will require counsel from legal representation.

6. HOW CAN CALIFORNIA'S TRANSPORTATION FINANCING STRUCTURE BE RESTRUCTURED TO GUARANTEE RELIABLE, STABLE AND ACCOUNTABLE SHORT AND LONG-TERM STRATEGIC INVESTMENT IMPLEMENTATION?

Once Prop 42 is fully funded, and we see a cycle of full funding I believe we will see a dramatic improvement in California's transportation financing structure.
However, the long-term solution to assure adequate and stable funding must be based on collaborative efforts of the Administration, the Legislature, and all of the transportation stake holders.

7. IN ORDER TO SUCCESSFULLY MEET COMMON GOALS AND OBJECTIVES (FEDERAL TRANSPORTATION EQUITY ACT) HOW SHOULD THE STATE AND CALIFORNIA'S TRANSPORTATION COMMUNITY ADDRESS AND IMPLEMENT AN EFFECTIVE TRANSPORTATION REAUTHORIZATION STRATEGY?

California's transportation community must work closely with the state's Congressional delegation to develop a cohesive message to increase the core formula and discretionary highway and transit funding levels for donor states. The States reauthorization program should focus on increasing the funding equity and rate of return for donor states, securing a greater level of funding and increased non-attainment rating structure for the CMAQ, improve innovative financing and project delivery resources, increase the state's share of transit formula funding and improve flexibility for High Density State programming and New Starts funding.

8 and 9. HOW CAN CALIFORNIA MAXIMIZE ITS SHARE OF FEDERAL TRANSPORTATION FUNDING?

California serves as one of the nation's primary gateways for international trade. The economic benefits of trade transiting the state's rail lines, roads, and highways provides economic benefits to every other state in the nation. It is critical that the state's advocacy efforts focus on the Administration and Congress to gain a greater return in funding to support the national benefits of improved goods and movement corridors within California's borders.

In addition, California must work in concert with other donor-states to increase total amount of transportation funding in the next reauthorization bill and to expand the scope and rate of return under minimum guarantee based on the percentage contribution to the Highway Trust Fund.

10. WHAT CAN BE DONE TO ENHANCE THE INFRASTRUCTURE OF CALIFORNIA'S AIR, LAND, SEAPORT AND INTRASTATE TRANSPORTATION PROJECTS TO MEET THE CHALLENGES OF MOVING GOODS AND DISTRIBUTING CALIFORNIA'S TRADE VOLUME?

Any investment made to improve the State's capacity to move goods from its ports and airports must be accomplished through a comprehensive, system wide approach. Projects are interconnected. Freight movement through out the state has been recognized as a problem that must be dealt with if California is to remain competitive with other states.

The State in collaborative efforts with other governmental agencies, ports, community organizations, environmental groups, shippers and carriers and other interested groups must strategize in the development of an integrated system. Strong leadership will be necessary to get all of the players to the table to negotiate and connect the pieces to cross jurisdictional lines.

11. WHAT ROLE SHOULD THE CTC AND THE CTC STAFF PLAY IN DEVELOPING AN EFFECTIVE GOODS MOVEMENT STRATEGY?

CTC has approved the formation of a Goods Movement Advisory Committee charged with recommending policy actions that should be considered to address the growing demands for goods movement and the need for California to remain competitive economically. It would be desirable to create a process whereby projects could become identified and can be part of the STIP as a special category of projects. It is necessary to recognize its importance in the continued growth and prosperity of our state.

12. WHAT SHOULD THE PRIVATE SECTOR'S RISK, RESPONSIBILITY AND PARTICIPATION BE IN THE PLANNING, INVESTING AND IMPLEMENTING A STATEWIDE SYSTEMATIC STRATEGY?

The cornerstone for any statewide successful goods movement strategy must include the creation of an overall public-private partnership within the state as well as individual partnerships for individual projects. Any private sector investment in freight movement infrastructure must have a "return on investment" Both the public and private sector must recognize the costs and benefits a project offers.

13. SHOULD THE STATE CREATE A STATEWIDE COALITION OF PUBLIC/PRIVATE SECTOR GOODS MOVEMENT STAKEHOLDERS TO HELP CALIFORNIA ADDRESS THE IMPORTANCE OF FREIGHT/GOODS MOVEMENT?

I believe a coalition should be created. I had the opportunity to attend a "listening conference" sponsored by Business, Housing and Transportation Secretary Sunne McPeak and California Environmental Protection Agency Secretary Alan Boyd in Los Angeles. The purpose was to bring together goods movement stakeholders to receive input and comments on Phase 1 of a statewide Goods Movement Action Plan. It is my understanding that after a review of public comments by the Cabinet Leavel Goods Movement Working Group, the phase 11 Goods Movement Action Plan will be released with prioritized infrastructure project recommendations as well as prioritized environmental recommendations.

I feel it is important for the CTC and CTC staff to be a partner in developing important strategies to address this all-important issue.

Thank you for the opportunity to respond.

Sincerely,

Marian

Marian Bergeson
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Newport Beach, CA 92660
(949) 646 5569
mbergeson@adelphia.net

SENATE RULES COMMITTEE

1. Statement of Goals

   a. Design a method of funding that is predictable and meets the long-term transportation needs of the State.

   b. Determine what happens to the State gas tax if we go to alternative fuels. That may be far in the future, but we should begin wrestling with that problem today.

   c. Continue efforts to influence the restructure of Caltrans to be become a much more efficient agency.

STATE TRANSPORTATION FUNDING AND PROPOSITION 42:

2. To what extent does the Governor's 2005-06 Budget May Revise address California's seriously constrained and unstable transportation funding over the long term?

   The Governor's 2005-06 Budget May Revise addresses California's seriously constrained and unstable transportation funding over the long term by allowing the Proposition 42 dollars ($1.3 billion) to be used for transportation improvements. This allows the Commission to resume funding much needed transportation improvements, but does not prevent us from potentially deprogramming STIP projects. Overall, however, we still have massive deficits in our transportation infrastructure that need to be addressed over and above Proposition 42.

3. With respect to the proposed constitutional amendment, do you think it is good policy to apply a spending cap to specific funds dedicated to transportation?

   As a transportation advocate, and one who does not really want to get involved in the Governor's constitutional amendment, there should be no caps on funds dedicated to transportation. In fact, we should be putting together some type of blue ribbon panel to discuss how we fund transportation going forward. Gasoline tax and sales tax on gasoline will be a diminishing commodity if we move forward in the 21st Century developing hybrid vehicles as well as other alternative fuels.

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4. Given the concerns outlined above regarding the impacts of the Governor's proposed constitutional amendment on transportation funding, how would you propose to remedy these shortcomings?

   As stated above in the answer to Question 3, we need to establish a blue ribbon panel of experts to develop alternative funding sources for transportation.

5. What if the Indian gaming revenues are not forthcoming, due to legal challenges or not being marketable for bond issuance?

   What options is available to move the gaming money to transportation if the bond issuance is delayed indefinitely?

   I would be in favor of issuing revenue bonds backed by Proposition 42 sales tax on fuel to cover the gap caused by the inability to receive Indian gaming revenues.

6. How can California's transportation financing structure be restructured to guarantee reliable, stable and accountable short and long-term strategic investment implementation?

   By establishing a blue ribbon panel, California's transportation financing structure can be restructured to guarantee reliable, stable and accountable short and long term strategic investment implementation.

FEDERAL TRANSPORTATION EQUITY ACT REAUTHORIZATION:

7. In order to successfully meet these common goals and objectives, how should the state and California's transportation community address and implement an effective transportation reauthorization strategy?

8. How can California maximize its share of federal transportation funding?

9. How could California become more effective in competing for federal discretionary transportation funds?

   California needs to prepare a more organized collective strategy when dealing with the Federal Government. In my opinion, key members of the State Senate Transportation Committee, the State Assembly Transportation Committee, members of the California Transportation Commission and the Governor and his representatives should jointly meet with all members of the California House of Representatives delegates and our two U.S. Senators to discuss the importance of working together to make sure that California receives its fair share of Federal transportation funds and that this fair share meets the transportation community's goals and objectives.

GOODS MOVEMENT:

10. What can be done to enhance the infrastructure of California's air, land, seaport and intrastate transportation projects to meet the challenges of moving and distributing California's trade volume?

11. What role should the CTC and the CTC staff play in developing an effective goods movement strategy?

    Currently the CTC has a subcommittee on goods movement. We have invited various stakeholders to participate in discussions that will lead to a goods movement strategy that we can implement Statewide.

12. What should the private sector's risk, responsibility and participation be in planning, investing and implementing a statewide systematic strategy?

13. Should the state create a statewide coalition of public/private sector goods movement stakeholders to help California address the importance of freight/goods movement?

    As stated above, the CTC has invited members of the private and public sector goods movement stakeholders to discuss developing statewide systematic strategy.

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June 8, 2005

Honorable Don Perata
Senate
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Senator Perata:

I am honored to have been nominated by Governor Schwarzenegger to serve on the California Transportation Commission. I appreciate the opportunity to address your questions and concerns regarding the State's transportation programs, and as such, have prepared the following responses to the questions in your letter of May 20, 2005:

State Transportation Financing and Proposition 42

1. **Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the commission.**

   My goals are two-fold. The first is to continue to work towards the establishment of stable, dependable and reliable funding for transportation. The second is to continue to make progress toward my long term goal of keeping the project delivery mechanisms intact and continuously improving to ensure that transportation dollars are efficiently and effectively spent and improvements are delivered expeditiously. It is my desire to give the citizens of California the greatest return on their investment in the form of a transportation system which provides for continued economic growth and enhances their quality of life.

JUN 1 0 2005

2. **To what extent does the Governor's 2005-06 May Budget May Revise address California's seriously constrained and unstable transportation funding over the long term?**

   The Governor's 2005-06 May Revise provides a much needed infusion of cash into transportation to get current projects moving once again. By choosing to make this investment in transportation, the Governor is making an important investment in the State's economy. I am hopeful this represents a commitment to address California's critical infrastructure needs. However, no annual budget can by itself address transportation funding over the long-term. More work will need to be done to assure stable, long term funding for transportation.

3. **With respect to the proposed constitutional amendment, do you think it is good policy to apply a spending cap to specific funds dedicated to transportation?**

   While I understand and respect the broad perspective which underlies the spending cap, I am most interested in working to develop a comprehensive strategy which will provide stable, long term funding for transportation in California.

4. **Given the concerns outlined above regarding the impacts of the Governor's proposed constitutional amendment on transportation funding, how would you propose to remedy these shortcomings?**

   I hope that the Governor and the Legislature reach agreement to make transportation funding based on user fees. Taxes on fuel should be dedicated to transportation, and further, they should be protected in a manner that provides stable, long term funding for transportation. Transportation funding and the mechanisms to protect that funding must be part of a long term strategy in which individual issues and constraints are addressed and resolved. Assessments and decisions regarding individual proposals must be based on the overall, long term strategy.

5. **What if the Indian gaming revenues are not forthcoming, due to legal challenges or not being marketable for bond issuance? What options are available to move the gaming money to transportation if the bond issuance is delayed indefinitely?**

   The options available to the state under such a scenario will need to be developed with direction from legal counsel.

6. **How can California's transportation financing structure be restructured to guarantee reliable, stable and accountable short and long-term strategic investment implementation?**

The foundation for guaranteeing stable, long term transportation funding is to protect Prop 42 funding with the same guarantees as provided the State Highway Account in Article 19. The long term solution for providing adequate and stable transportation funding must be based on strategies developed through consensus of the Administration, the Legislature, and all transportation partners.

Federal Transportation Equity Act Reauthorization

7. **In order to successfully meet these common goals and objectives, how should the state and California's transportation community address and implement an effective transportation reauthorization strategy?**

   The California transportation community, including the state and its local partners, must seek to influence the reauthorization with a cohesive message that communicates the importance of transportation funding to California and its significance in addressing the broader interrelated issues of economic growth and development, land use, and air quality, which impact not just California, but the nation as a whole.

8. **How can California maximize its share of federal transportation funding?**

   The California transportation community must focus on broad statewide transportation goals and objectives which will unify the support of the California Congressional delegation for legislation which best reflects the transportation needs of all Californians.

9. **How could California become more effective in competing for federal discretionary transportation funds?**

   Again, the California transportation community must seek to influence funding decisions with a cohesive message that communicates the importance of transportation funding to California and how investments in California's transportation system benefit not just California, but the nation and its economy as a whole.

Goods Movement

10. What can be done to enhance the infrastructure of California's air, land, seaport and intrastate transportation projects to meet the challenges of moving and distributing California's trade volume?

Goods movement infrastructure and related operations through the State should be considered as part of one integrated, multi-modal system regardless of funding or ownership.

The State, in partnership with other governmental entities, community organizations, shippers and carriers, and other interested parties should give goods movement needs and impacts full consideration in the development of a multimodal transportation system.

Statewide system investments should be focused on corridors and gateways that handle the highest volume of freight traffic and/or have the most significant transportation problems.

Funding flexibility and resources should also be expanded, so that appropriate goods movement projects can be developed.

Provide State leadership by promoting and negotiating cross-jurisdictional coordination to bring about improved efficiencies and connectivity, including ports-of-entry, for the movement of people, goods and information.

11. What role should the CTC and the CTC staff play in developing an effective goods movement strategy?

The CTC, at its January 2005 meeting, approved the formation of a Goods Movement Advisory Committee charged with recommending to the CTC policy action that the Legislature and the Administration could consider in order to address the growing demands for goods movement and California's ability to remain competitive economically.

In particular the Advisory Committee is charged with reviewing, considering and advising the Commission on the following matters:

- Infrastructure needs as they relate to goods movement.
- Where state and federal investments in infrastructure would have the most effective impact on California's economy.

- Topics and issues for roundtables to bring together private goods movement stakeholders and public goods movement planners to share information on local goods movement issues.
- Review of goods movement related legislative bills and recommended positions.

12. What should the private sector's risk, responsibility and participation be in planning, investing and implementing a statewide systematic strategy?

As with any issue which requires thoughtful, responsible, long term solutions, a statewide Goods Movement strategy will require a partnership between the public sector and the private sector which takes advantage of the strengths of each to develop lasting and quality solutions. The goal should be to invest more effectively to provide an efficient transportation system that enhances the quality of life for all Californians and promotes economic growth. This goal can be achieved only if the public and private sectors agree about the fundamental issues and are both bound by the risks, responsibilities, and costs of the strategies.

13. Should the state create a statewide coalition of public/private sector goods movement stakeholders to help California address the importance of freight/goods movement?

The Commission will be happy to work with such a coalition to develop meaningful strategies to address freight/goods movement.

Thank you for allowing me to respond to your questions and concerns. I welcome the opportunity to work with the talented and committed Commissioners now part of the Transportation Commission, as well as the opportunity to support the Legislature and the Administration in providing a safe and efficient transportation system for the citizens of California.

Sincerely,

Joseph Tavaglione
Chair

516-R

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HEARING

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WEDNESDAY, JUNE 29, 2005
1:40 P.M.

517-R

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 29, 2005

1:40 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

EDWARD C. WILLIAMS, Member
California Gambling Control Commission

INDEX

Page

Proceedings 1

EDWARD C. WILLIAMS, Member
California Gambling Control Commission 1

Background and Experience 1

Motion to Confirm 2

Questions by CHAIRMAN PERATA re:

Board Members Living in Area Outside the Headquarters of the Department 3

Statements by SENATOR BATTIN re:

Number of Casinos in Area of Rancho Mirage 4

Questions by SENATOR BOWEN re:

Money Collected in California to Deal with Problem Gambling 5

Commission's Plan to Deal with Problem Gaming 5

Relationship between Office of Problem Gambling and Commission 6

Discussion between SENATORS BATTIN and BOWEN 7

Responsibility for Spending Funds 7

Commission-sponsored Bill to Allow Commission to Work in Private Session 8

Training Programs for Employees in Terms of Problem Gamblers 9

Commission's Lack of Ability to Run Programs, and Lack of Authority over Funding of Programs 10

Statements by SENATOR BATTIN re:

Control of Gambling Programs within Department of Drug and Alcohol 11

Many Studies 11

Committee Action 12

Termination of Proceedings 12

Certificate of Reporter 13

APPENDIX: Written Responses to Committee Questions By Appointees, as well as Written Statements by Appointees Not Required to Appear: Members of the California Arts Council, MALISSA FERUZZI SHRIVER and MICHAEL A. RUBEL 14

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: And Item Four, we have one gubernatorial appointee, Edward Williams, Member of the California Gambling Control Commission.

Mr. Williams.

MR. WILLIAMS: Thank you, sir.

CHAIRMAN PERATA: Nice to see you. Would you like to say a few opening words?

MR. WILLIAMS: Yes, sir.

Senator Perata, Members of the Senate Rules Committee, I'm Ed Williams. I was appointed as a Commissioner on the Gambling Control Commission approximately six months ago.

Each of you has a copy of my resume, so I won't go into a long description of my background. I will simply state that I have been a citizen of our state for 65 years, and have worked in the public sector for over 45 of those years, primarily in the field of law enforcement.

I've served as a Chief of Police, and elected to the Office of Sheriff-Coroner-Marshal for three four-year terms by the citizens of San Luis Obispo County.

I've been very busy in the past six months. I've visited about 40 percent of the Class Three gaming casinos in the state, most of the card clubs in Southern California. I've attended seminars, educational programs, and many meetings sponsored by tribal organizations, the American Bar Association, and others. I've personally met with many tribal leaders and

card club executives regarding their concerns and their views on the future of gambling in California.

In addition, I've met with the Executive Director of the California Problem Gamblers Association and other citizen advocates in an attempt to better understand their concerns with gambling.

I've found the past six months to be very interesting and challenging. I worked hard and have not missed a single commission meeting, and have done my best to cast an informed and fair vote on each issue before the commission.

I respectfully ask for your affirmative vote for my confirmation. Thank you.

CHAIRMAN PERATA: Thank you, sir.

Any questions from Members?

SENATOR ASHBURN: I'd like to make the motion because Sheriff Williams is from my home county of San Luis Obispo. He was the Chief of Police of the community where I grew up, next door.

CHAIRMAN PERATA: When you were in high school.

SENATOR ASHBURN: Even before then. And most recently, the Sheriff was the Chief of Police in one of the communities that I'm privileged to represent.

He's an outstanding individual and I'd like to --

SENATOR BATTIN: Then his senses came to him when he moved to Rancho Mirage.

[Laughter.]

SENATOR BATTIN: Now he's living in God's country.

SENATOR CEDILLO: Of course, his illustrious career did begin with the Los Angeles Police Department.

[Laughter.]

MR. WILLIAMS: Whatever works.

[Laughter.]

CHAIRMAN PERATA: I'd like to ask one question. And I do this by way of just maybe a warning.

Quite a deal was made sometime this year by one of the departments over board members who were living in one area, and they were domiciled -- the office or headquarters was domiciled -- somewhere else.

I notice and appreciate your candor that you're going to spend 60 percent of your time working out of your home area.

Has anybody in the administration talked to you about that, or put you on notice, or told you to keep a low profile?

MR. WILLIAMS: No. There are no casinos in Sacramento. There are around my area of Southern California and up to the central part of the state.

And my goal is to visit each and every single one of them. Where ever I do that from is certainly not up to me.

CHAIRMAN PERATA: Those of us that spend too much time up here get a really weird view of life, and I think maybe that's the difference. I just don't want to see you get blind-sided six months from now and saying, hey, you can't live in God's country; you have to come back here to purgatory.

SENATOR BATTIN: Well, Mr. Chairman, when

Mr. Williams came and discussed his appointment with me, we did talk about the travel, casinos in the area. And literally, as you probably all well know, I'm in the center of the universe in Indian gaming, and so is Mr. Williams. I mean, just in 15 miles, 20 miles of where he lives there are five, and if you include Morango, six tribal casinos.

And he, when we discussed it, he had visited them all and had talked to them. So, I think that he's very actively taking his job seriously. And it's probably to an advantage to the state that he lives in Rancho Mirage for, oh, so many reasons, but primarily --

CHAIRMAN PERATA: If you guys would like to be alone for awhile --

[Laughter.]

SENATOR BATTIN: He's a voter, come on.

And that he's taking his job seriously, and he's putting in the time.

CHAIRMAN PERATA: Oh, no. That was not the thrust of the question.

And I think having you there and checking it out, there has to be some benefit to living in Rancho Mirage, and being close to casinos is probably as good as any.

Do you have family here, sir?

MR. WILLIAMS: Yes, I do.

CHAIRMAN PERATA: Would you like to introduce them?

MR. WILLIAMS: I would like to introduce my wife Cindy of nearly 40 years. My son Robert Bova.

1 And the rest are members of --
2 CHAIRMAN PERATA: Hangers on?
3 MR. WILLIAMS: No, no. They're highly respected
4 members of the Gambling Control Commission.
5 CHAIRMAN PERATA: Oh, excuse me. I couldn't tell
6 from here. Now I see clearly, of course.
7 Any further questions?
8 SENATOR BOWEN: I do have a couple of serious
9 questions.
10 There was an article earlier in the San Diego
11 Union Tribune talking about the money that has been collected in
12 California from the tribes to deal with compulsive gaming, and
13 the amount that's spent on treatment, which in California, I
14 understand, is zero. We haven't spent any of our money on
15 treatment of gaming.
16 I was actually very interested to learn that in
17 Oregon, they believe that 18 to 42 percent of gaming revenue
18 comes from problem gamblers. In Oregon and Nevada both, there
19 are programs that include an 800 phone number on ATMs in gaming
20 areas, and a whole host of things.
21 I don't think California has done anything like
22 that. What is the Commission's plan for dealing with that? I
23 notice there's nothing about problem gaming in the goals that
24 you submitted.
25 MR. WILLIAMS: The area of problem gambling is
26 not within the purview of the commission.
27 The money has gone to Alcohol and Drug from the
28 Health Agency.

I have a personal interest in problem gambling, and the commission has undertaken regulations that will be published probably in January dealing with the area of problem gambling, requiring card clubs to do a lot of things: to bar problem gamblers if they request it; to put notices in their card clubs, et cetera.

To the extent that the commission has jurisdiction and control, we are very actively supporting or doing what we can.

SENATOR BOWEN: So what is the relationship between the Office of Problem Gambling and the commission?

MR. WILLIAMS: To my knowledge, the money is there, and the responsibility for gambling in California lies with the commission. So, it requires a working together, and they're doing that.

They just let a contract of $1.4 million to an organization in Chicago to conduct a study that will tell them an awful lot about problem gambling in our state. That plus a recent study done at Harvard, at the medical university, provides additional information, where their study disclosed that three to five percent of those who gamble are pathological gamblers.

So, the area is certainly under study by a lot of very bright people, and there will be a lot of effort put forth in that area, both from the commission and many others in the very near future.

SENATOR BOWEN: I guess I still don't understand. Are you saying there is no relationship between the Office of

1 Problem Gambling and the commission? I'm just not clear.
2 MR. WILLIAMS: Well, they're meeting. They're
3 discussing the problem. They're discussing what is the best
4 course of action.
5 The commission will be adopting some regulations
6 on this subject. And it's high on the agenda of many of us.
7 SENATOR BATTIN: The commission doesn't control
8 the funding, though.
9 MR. WILLIAMS: No, sir.
10 SENATOR BATTIN: That comes through the Special
11 Distribution Fund.
12 SENATOR BOWEN: Right, but my understanding is,
13 there's plenty of funding, but that nothing's being done with
14 it.
15 SENATOR BATTIN: I agree with you. I don't know
16 if it's commissions purview to direct where that funding goes.
17 SENATOR BOWEN: That's why I was asking the
18 question because I still don't know.
19 SENATOR BATTIN: But you're right.
20 SENATOR BOWEN: I don't know who is in control of
21 determining how the funding, that's apparently sitting in a bank
22 account somewhere, gets spent.
23 Is the commission charged with the responsibility
24 of spending the funding that's collected from the --
25 MR. WILLIAMS: No, ma'am.
26 SENATOR BOWEN: Who does determine that?
27 MR. WILLIAMS: The Office of Alcohol and Drug.
28 SENATOR BOWEN: And you have only whatever kind

of relationship you have because you know someone there?

I'm trying to figure out how it works.

MR. WILLIAMS: I wish I could help you more. In my six months, the information that I've gathered is that they have the money. We have the concern and some responsibility. We have accumulated some regulations that are going through the process and will be adopted very soon. And that is about it.

I personally have met with individuals who have -- share my concern, and obviously share your concern. And we'll be doing whatever we have the jurisdiction and ability to do.

SENATOR BOWEN: The questions that were asked by staff raise concerns about a bill that apparently the commission is sponsoring that would allow the commission to conduct portions of its work in private session.

MR. WILLIAMS: Yes, ma'am.

SENATOR BOWEN: Can you talk a little bit about that bill, and why the commission work needs to be conducted outside of the public forum?

MR. WILLIAMS: Because they have an obligation to maintain the confidentiality that they come in contact, that deals with tribal business. And that's a very firm obligation that is described in detail in the compacts.

We cannot discuss it -- anything -- among ourselves prior to an open meeting. And we can't have serial meetings. We can't discuss it with one, and then go to another and reach a consensus, or get ideas even as to how one should vote.

So, it's all brand-new to us when we walk into the meetings. And in order to make judgments relative to personnel matters, auditing information from the tribes that is certainly to be maintained confidential, it puts us in a very precarious position.

It's like discussing personnel matters at a city council level in open session. They go into closed session to discuss those, and then they come out and give a brief overview of what transpired, of what their actions were.

And that is, in a nut shell, all that the commission needs to accomplish. It's not a matter of keeping things secret. It's not a matter of doing much except attempting to meet our obligations toward the tribe and toward the privacy acts, and et cetera, et cetera.

SENATOR BOWEN: I've looked at the bill. I just am always concerned when we start closing public meetings. We've actually been going in the opposite direction in recent years.

One final question. Let me go back to the question of problem gaming.

Does the Gambling Commission have any responsibility in terms of training programs for employees, posting? Is it all within the purview of the Office of Problem Gaming, or are there portions of what we might be doing that fall within the jurisdiction of the commission?

MR. WILLIAMS: The regulations that will soon be promulgated by the commission, specifically card rooms will be required to post or provide information concerning the nature

1 and symptoms of problem gambling, and a toll-free number of
2 information and referral services. If the card room has a web
3 site, that web site would also be required to include similar
4 information regarding problem gambling. Card rooms would be
5 required to train their employees concerning the nature and
6 symptoms of problem gambling and how to assist patrons in
7 obtaining information about the problem gambling program,
8 including self-restriction and self-exclusion programs. And it
9 goes on for two pages.
10 And the area I was --
11 SENATOR BOWEN: So you're going to write the
12 regulations that deal with the posting of the 800 number, and so
13 forth, but you have no control or nothing to say about the
14 programs that are behind the regulations?
15 I mean, the 800 number is not something you have.
16 It's the Office of Problem Gambling; right?
17 MR. WILLIAMS: No, ma'am. Nor do we have any
18 money to promulgate any specific programs, to my knowledge. Of
19 course, I've been there for six months.
20 SENATOR BOWEN: These are really more like
21 organizational questions. It just sounds like we've got one
22 agency that's writing regulations, but it has no ability to run
23 any of the programs, or any authority over any of the funding
24 that will be needed to do that.
25 I don't know how that is expected to produce
26 results that are beneficial.
27 SENATOR BATTIN: Welcome to the beauties of the
28 Tribal State Gaming Compacts.

1 My staff tells me that the Department of Drug and
2 Alcohol have control of the programs. They get about a $3
3 million appropriation per year. And that they have been
4 spending it on studies and broad informational things like
5 pamphlets. That they just completed a study, a situational
6 assessment of problem gambling services in California. They
7 completed it in March.
8 The thing that's most interesting about this is
9 that any part of the $3 million that they don't spend is being
10 reverted back into the SDF, which, I'm sure you would agree with
11 me, you would probably want them to spend all the $3 million.
12 So, that's not something that our nominee can
13 address, but it's something that maybe we want to look into.
14 SENATOR BOWEN: The odd part of it is that the
15 commission is writing the regulations that have the reference to
16 the 800 number, but then they have no ability to make sure that
17 there's actually anybody on the phone when someone dials the 800
18 number.
19 MR. WILLIAMS: I am not at all sure I disagree
20 with your point, ma'am.
21 SENATOR BATTIN: It appears that they're studying
22 the studies, and they'll come out with a study to let us know.
23 CHAIRMAN PERATA: That's the tradition of that
24 department.
25 SENATOR BOWEN: I guess we have some work to do
26 on that, not on this commission, but on the other piece of it.
27 CHAIRMAN PERATA: Any further comments or
28 questions?

SENATOR ASHBURN: I think there are several motions.

CHAIRMAN PERATA: I thought you wanted to get into one of those studies.

SENATOR ASHBURN: Well, they sound fairly lucrative. That was my motion, that I would receive the next study grant.

CHAIRMAN PERATA: Before he gets into trouble, anybody here like to speak in support? Opposition?

Seeing none, without objection we'll adopt our unanimous roll call for confirmation.

[Thereupon the final vote was 5-0 for confirmation.]

CHAIRMAN PERATA: Congratulations.

MR. WILLIAMS: Thank you very much, sir. I appreciate it.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 2:10 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of June, 2005.

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

STATE OF CALIFORNIA

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DEAN SHELTON, CHAIR
JOHN CRUZ
J.K. SASAKI
ED C. WILLIAMS

June 17, 2005

Edward C. Williams
Goals

The Honorable Don Perata, Chairman
Senate Rules Committee
State Capitol Room 420
Sacramento, Ca 95814-4900

Re: Confirmation Hearing, Edward C. Williams

Dear Senator Perata and Members of the Rules Committee,

The following is offered in response to your request for a brief outline of my short and long-term goals as a Commissioner, California Gambling Control Commission.

Short-term

- Better the communication and build a cooperative relationship with tribes (both compacts and non-compact), card rooms and proposition player services.
- Continue to improve coordination with the Department of Justice, Division of Gambling Control and the National Indian Gaming Commission.
- Develop priorities and goals for the Commission based upon mandated responsibilities.

Long-term

- Continue to improve our responsiveness and services to our various stakeholders.
- Develop a long term Strategic Plan for the Commission.
- Keep the Legislature, stakeholders and the general public informed of the Commission's goals and responsibilities.

If I can provide any additional information, please do not hesitate to contact me.

Sincerely,

ED C. WILLIAMS
Commissioner

JUN 22 2005

Malissa Feruzzi Shriver
Goals

From: Malissaferuzzi@aol.com
Subject: **senate confirmation statement**
Date: June 22, 2005 11:06:25 PM PDT

JUN 23 2005

MR DON PERATA
SENATE RULES COMMITTEE

MR PERATA,
FIRST LET ME APOLOGIZE FOR SQUEEZING THIS IN, ON THE EVENING OF THE DEADLINE, BUT I HOPE YOU ARE AWARE THAT I ONLY RECEIVED THIS LETTER SUNDAY, AS I RETURNED FROM NEW YORK.

AS I AM A NEW APPOINTEE TO THE CALIFORNIA ARTS COUNCIL, I WOULD BE PLEASED TO GIVE YOU A BROAD GENERAL OUTLINE OF MY SHORT AND LONG-TERM GOALS FOR THE COUNCIL, BASED ON THE CURRENT MANDATE.

IN THE NEAR FUTURE, I AM CO-CHAIRING THE MEDAL FOR THE ARTS CEREMONY, WHICH WE ARE HOPING TO STAGE IN LATE JANUARY. I AM AIMING TO TELEVISE THIS EVENT, MAKING IT A HIGH PROFILE EVENING FOR THE STATE, TO HONOR AND CELEBRATE OUR CALIFORNIA ARTISTS. THIS EVENT IS AN EXAMPLE OF ONE WAY TO RAISE AWARENESS STATEWIDE, AS TO THE IMPORTANCE OF ART IN OUR LIVES. I AM ALSO WORKING WITH OTHER COUNCILMEMBERS TO LAUNCH A MARKETING OR "BRANDING" CAMPAIGN FOR THE ARTS COUNCIL, WITH THE GOAL OF EDUCATING THE PUBLIC AS TO THE NECESSITY OF ART IN OUR LIVES, IN OUR CHILDREN'S EDUCATION, AND IN OUR COMMUNITIES. WE PLAN TO TAKE ADVANTAGE OF THE LATEST RAND STUDY, "THE GIFTS OF THE MUSE", TO FURTHER OUR MESSAGE ABOUT EARLY EXPOSURE TO THE ARTS, THE CRITICAL IMPORTANCE OF THAT EXPERIENCE, AND THE LONG RANGE BENEFITS, BOTH EXTERNAL AS WELL AS INTRINSIC.

JUN 23 2005

I AM ALSO WORKING HARD TO THINK UP NEW AND CREATIVE WAYS FOR THE ARTS COUNCIL TO RAISE FUNDS FOR MORE PROGRAMS...I AM TRYING TO GET LOCAL ARTISTS TO DONATE IMAGES, THAT WE CAN LICENSE FOR SALE ON A WHOLE RANGE OF PRODUCTS, FOR SALE THROUGH MUSEUM STORES, ETC. I AM ALSO LOOKING INTO POSSIBILITIES OF PARTNERING WITH CALIFORNIA COMPANIES TO USE THESE IMAGES FOR SALE, TO RAISE BOTH AWARENESS AS WELL AS FUNDING FOR PROGRAMS IN PUBLIC SCHOOLS.

SPEAKING OF SCHOOLS, I HAVE FOUND A PROGRAM HERE IN MY HOMETOWN, THAT IS CALLED "TRASH FOR TEACHING". THIS PROGRAM COLLECTS RECYCLABLE "TRASH" (OLD YARN SPOOLS, PEN MAKING PLASTICS, CARDBOARDS, TILES) AND DELIVERS IT TO SCHOOLS WITHOUT ART CLASSES, ALONG WITH AN ART CONSULTANT TO SHOW THE TEACHERS HOW TO CREATE PROJECTS OUT OF THE MATERIALS....TEACHING THE KIDS THE VALUE OF RECYCLING, ALONG WITH PROVIDING THEM A CREATIVE EXPERIENCE. THIS PROGRAM NOW HAS 40 SCHOOLS IN THE LA UNIFIED SCHOOL DISTRICT, AND IT IS A WILD SUCCESS, IN IT'S FIRST SIX MONTHS. THIS IS AN EXAMPLE OF A POSSIBLE PARTNERSHIP FOR THE ARTS COUNCIL AND THE E.P.A, SOMETHING GOOD FOR OUR STATE ENVIRONMENTALLY, AS WELL AS BEING SMART PROGRAMMING FOR LEANER TIMES.

LONG TERM, I AM HOPING THAT AS A STATE, WE WILL BE INCLUDING MORE ART PROGRAMS IN OUR SCHOOLS, OUR COMMUNITIES, EVEN BECOMING A LEADER NATIONALLY, ENCOURAGING OTHER STATES TO FOLLOW SUIT, AS OUR SCHOOL SYSTEM THRIVES, GIVING MORE CHILDREN OPPORTUNITIES TO BE EXPRESSED AND TO SUCCEED IN AREAS ABOVE AND BEYOND MATH AND ENGLISH. I AM HOPING THAT CALIFORNIA WILL REMAIN THE WESTERN CALLING IT HAS BEEN, ATTRACTING THE BEST AND BRIGHTEST FROM ALL OVER OUR COUNTRY, TO COME AND CREATE HERE, IN THE LAND OF IMAGINATION AND IDEAS. WE NEED TO PROMOTE OUR STATE FOR THE ARTISTS WE ARE PROUD TO CALL OUR OWN, AS WELL AS FOR THE ARTISTS AND LEADERS TO COME.

MALISSA FERUZZI SHRIVER

Michael Rubel
Goals

ARTS COUNCIL
STATEMENT OF SHORT AND LONG TERM GOALS

The arts play a critical role in modern society. They enrich the lives of each individual, both intellectually and spiritually. They provide significant career opportunities, especially in a state such as California, which is the international epicenter of artistic production, and reaps the financial and emotional rewards associated with that position. And they provide an opportunity within the framework of primary, secondary and higher education for stimulation, self-esteem, passion and joy, which cannot help but enhance learning. Moreover, as icing on the cake, the arts provide a color blind vehicle to promote diversity within California, a state which may have the most diverse population in the history of civilization.

Obviously, the budget crisis in California will limit the resources which can be deployed by the Arts Council. It's short term goal must be to deploy funds with the maximum efficiency to reach the greatest number within California – both the greatest number of "viewers", the greatest number of "producers" of art and the greatest number of art students. Not an easy task, it must be attacked with energy, discipline and insight.

Long term goals would, on the one hand, be quite similar (albeit, hopefully with an increased budget) and, on the other hand, quite different. Efficiencies must be created within the arts. Innumerable arts organizations are constantly reinventing the wheel, often without learning the lessons of their predecessors. These organizations need to be assisted in their understanding of how to reach their intended audiences, how to raise money from the private sector, how to increase their operating efficiencies, and how to collaborate with their peer organizations to squeeze out unnecessarily duplicative expenditures. The same can be said for educational institutions in their pursuit both of arts education and their use of the arts to enhance core educational programs. What may ultimately be the biggest long term goal (and dream) is to maximize the intersection of arts organizations, and their meaningful existing infrastructures, with the process of art education, in order to assure that there will be artists developed in the generations to come, and a public that has enough personal connection to the arts, that the arts institutions can maintain their vitality.

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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JULY 13, 2005
1:42 P.M.

518-R

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JULY 13, 2005

1:42 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

LINDA C. BROWN, Deputy Director
Office of Administrative Law

BARBARA A. WARD, Chief
Bureau for Private Postsecondary and
Vocational Education

BROOKS ELLISON
Coleman College
Life Chiropractic College West
Cleveland Chiropractic College
Kaplan College
Boston-Reed Company

INDEX

Page

Proceedings 1

Governor's Appointees:

LINDA C. BROWN, Deputy Director
Office of Administrative Law 1

Opening Statement 1

Questions by SENATOR BOWEN re:

DHS Emergency Regulations that Allow Collection of Assets of Medi-Cal Recipients after Their Deaths 2

OAL's Statutory Authority to Review Those Regulations, or Determination of Emergency 2

Independent Review of What Is an Emergency 3

Importance of OAL Review of All Regulations 3

Electronic Submission of New Regulations for Review 4

DHS Regulations that Delayed Implementation of Nurse-Patient Ratios 5

OAL's Assessment of Emergencies 6

Appeal of OAL's Decision on Emergency 6

Questions by CHAIRMAN PERATA re:

Definition of "Written in a Comprehensible Manner" 6

Motion to Confirm 8

Committee Action 8

BARBARA A. WARD, Chief
Bureau for Private Postsecondary and
Vocational Education 9

Background and Experience 9

Questions by CHAIRMAN PERATA re:

Wherewithal to Remedy Problems 13

Funded by Fees 14

Decreasing Accounts Receivable 14

Plans to Increase Fees Charged to
Regulated Institutions 16

Questions by SENATOR BOWEN re:

Vast Number of Institutions the
Bureau Monitors 17

Student Tuition Recovery Fund 18

Fee Schedule Does Not Take into
Account Operating History of School
Regarding Complaints 19

Schools Bear Costs of Enforcement Actions 20

Bureau's History of Illegally Extending
Temporary Licenses of Schools 21

Schools' Annual Reports to Bureau 22

Bureau's Verification of Information
Contained in Annual Reports 23

Bureau's Authority over Schools Not
Headquartered in California 25

Motion to Confirm 26

Witness in Support:

BROOKS ELLISON
Coleman College
Life Chiropractic College West
Cleveland Chiropractic College
Kaplan
Boston-Reed 27

Committee Action 28

Termination of Proceedings 28

Certificate of Reporter 29

APPENDIX: Written Responses to Committee Questions
By Appointees: 30

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

SENATOR BATTIN: I'm going to item number three, our first appointment up for confirmation is Linda Brown, Deputy Director of the Office of Administrative Law.

Welcome.

MS. BROWN: Thank you.

SENATOR BATTIN: Do you have an opening statement?

MS. BROWN: Brief.

SENATOR BATTIN: That's better.

MS. BROWN: My name is Linda Brown of the Office of Administrative Law.

I've given each of you a statement of my qualifications, which includes long-time service here at the State Senate as a consultant to Senator Ross Johnson. And my years of drafting bills, reviewing bills, analyzing bills is good background for the Office of Administrative Law and their primary function, which is to review regulations proposed by other state agencies and assess whether or not those are consistent with the underlying statutes. We also monitor compliance with procedural requirements.

I've submitted a statement, a list of goals, things that I'd like to accomplish if I'm confirmed as Deputy Director, and I welcome any questions about my qualifications, or the office generally, or any of the materials that I've provided.

SENATOR BATTIN: Thank you.

Do any Members have questions?

Is there anyone here in support to speak on behalf of our nominee? Anyone here against her?

SENATOR BOWEN: I do have a question, thank you.

This has to do with the Department of Health Services, emergency regulations that let the department collect more of the assets of elderly Medi-Cal recipients after they die.

I understand there was a great deal of controversy over the regulations, primarily over the issue of whether there was an emergency, and therefore emergency regulations were granted. And I believe that the issue was that whether OAL had statutory authority to review either the substance of proposed emergency regulations in order to evaluate their compliance, as you normally do, or the question of whether there is an emergency.

Can you address just the legalities of both of those questions from your point of view?

MS. BROWN: Thank you, Senator, yes.

The life estate Medi-Cal regulations were adopted by the Department of Health Services pursuant to their statutory authority that allows them to engage in rule-making activity to prevent fraud or abuse. And that statute provides that those regulations are deemed emergencies, and they're exempt from our review.

We have -- we accept those as basically file and print only. We accept them. We ascertain that the department has authority. We see that in that authority, it's deemed an

emergency, exempt from our review, and we send it to print in the CCR.

SENATOR BOWEN: So, you have no independent review over the question of what is an emergency and what's not?

MS. BROWN: We assess -- rule making that is not deemed an emergency, yes. The agency has to provide, they have to make an express statement that something is an emergency. They also have to provide us with specific facts about what is causing the emergency. And they have to give us a good story, and we assess that, and we use a reasonable basis.

But the fact that it's controversial or not controversial is irrelevant for that review. It's their authority, and have they met the threshold requirements for stating an emergency.

And we are concerned that maybe agencies are using this a little too frequently. There are certainly many, many legitimate emergencies, very recent examples of that. But we'd like to see the bar raised a little bit so that it does have to be a real emergency.

SENATOR BOWEN: As one who's spent probably twelve-and-a-half years voting against practically anything that had an OAL review exemption in it, let me say that I think that having OAL look at those regulations is actually very important for the state. It may take a little longer, but it saves a lot of trouble.

MS. BROWN: One thing I'd like to mention, too, is we purchased for the first time -- we're a little bit behind the times technologically -- we purchased a scanner. Very soon

we expect to be able we get a paper file.

SENATOR BOWEN: Wow! Did you tell the Department of Corrections? They're going to be jealous.

MS. BROWN: We hope very soon to be able to post an entire emergency file very shortly after it arrives at our office. The whole text --

SENATOR BOWEN: They're not able to send it to you electronically?

MS. BROWN: There's no requirement to submit anything to us electronically. We get paper documents. We often ask for an electronic version, but there's no obligation to provide us with that.

And we would like to, particularly in an emergency that comes in at 4:00 o'clock on a Friday afternoon, we'd like to post that entire file on our web site so that people can look at the text. They can look at the statement behind it. And we're very, very close to being able to do that.

SENATOR BOWEN: Perhaps it's something that Members of the Rules Committee might, on a bipartisan basis, ask the executive branch if they'd be willing to transmit proposed regulations electronically.

Is there a legal reason that you know of?

MS. BROWN: I think one of the reasons is practicality. Some rule-making bodies are very, very small boards and commissions, and not everybody has the same technology.

I've assumed everybody's got word processing though, at this point, but they're not obligated to provide us

with that.

SENATOR BOWEN: I think it's something I'll follow up with the new Department of Information Technology, because I assume at this point that there's nobody who's using any word processing software other than the Bill Gates licensed. I don't think there's any legacy systems left that use a proprietary word processing system, although we had one i the Assembly when I got there. We had a proprietary system.

That's actually a good thing to know. And I think maybe that if there really are technological issues, that's one thing, but otherwise it just makes absolutely no sense to me that you're having to -- it isn't the cost of the scanner. I'm sure that the cost of having somebody stand at th scanner and scan regulations from one agency far exceeds the cost of the scanner.

The other question, and I believe this may have happened before you got there, is the DHS regulations that delayed implementation of the nurse-patient ratios. Those were emergency regulations?

MS. BROWN: That's my understanding. That was before my time.

That is the subject of a court case now, and the application of those regulations has been enjoined by the courts. That's my understanding, is it was an emergency regulation.

SENATOR BOWEN: Since you weren't there --

MS. BROWN: But again, it could be very, very controversial. And if they have the statutory authority, we

look very closely at their authority, at the statement of emergency. And that's our role, is assessing that.

But on the controversy --

SENATOR BOWEN: You do assess whether you think it's a qualified emergency?

MS. BROWN: They have to provide specific facts. We look at those facts and use, you know, a reasonable basis. And we have, since I've been there, rejected a couple for not stating an emergency. But neither of those was controversial, but they hadn't really presented us --

SENATOR BOWEN: Can they proceed if they decide that your assessment -- if there's a difference in the assessment of what's an emergency, whose view of the matter is --

MS. BROWN: Well, the two that I recall we disapproved. We have to issue a disapproval decision and give them the basis for that disapproval. They have a right to appeal to the Governor. And that's the process.

SENATOR BOWEN: And that's where the buck stops, as we all know.

Thank you.

CHAIRMAN PERATA: I apologize for stepping out.

If you haven't answered this, I would like you to. As a big fan of the English language, when you have "written in a comprehensible manner," was that thought up already? The phrase, "written in a comprehensible manner," I would kind of like to know what you consider to be comprehensible.

MS. BROWN: I find since I've been there it's a little bit less standard than I'm used to here at the Capitol, drafting statutes.

We have a standard clarity, and agencies get a little distressed with us when we say that they're not meeting the standard of clarity. But basically, we're not the regulated public. We have to look at it and be able to understand what the regulated public would have to ultimately understand.

Some of them get very scientific, and it can be very, very difficult on the reviewing attorneys.

CHAIRMAN PERATA: Even if you just tell them, "I'm writing with regard to" equals "about." You'd be surprised how you can just condense things. I could give you some pointers. I could correct your papers for you for awhile.

[Laughter.]

CHAIRMAN PERATA: You hit it. The public has to be able to comprehend. I just use that as a good standard, a consumer standard rather than a legal standard.

MS. BROWN: We don't write their regulations. They submit them to us. We can point out where we think they're unclear, and point out problems, but ultimately it goes back to them for redrafting.

CHAIRMAN PERATA: Yes, but you might want to make suggestions, because if they've already drafted in an unclear manner, they may not understand how to do it with clarity.

MS. BROWN: Good point. Some agencies --

CHAIRMAN PERATA: They'll fear you.

MS. BROWN: Some agencies are better than others

as far as their drafting.

CHAIRMAN PERATA: We could get a little list, maybe a Top Ten, like Letterman.

[Laughter.]

MS. BROWN: I'll work on that.

CHAIRMAN PERATA: Thank you.

Any further questions?

Do you have family here?

MS. BROWN: Oh, my substitute sister, Patricia Hernandez came with me for support today. My oldest friend, years of friendship.

CHAIRMAN PERATA: Secretary, please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Five to zero.

MS. BROWN: Thank you very much.

CHAIRMAN PERATA: Congratulations.

[Thereupon the Rules Committee acted on another Agenda Item.]

CHAIRMAN PERATA: Ms. Ward, now that we've gotten the panel tuned up, would you like to come forward.

MS. WARD: Is that a good thing?

CHAIRMAN PERATA: Welcome.

MS. WARD: Thank you.

Good afternoon, Mr. Chairman and distinguished panel members. My name is Barbara Ward, and I assumed the responsibility as Bureau Chief for Private Postsecondary and Vocational Education January 3rd of 2005.

As you are probably aware based on the packets of information that you have been provided, the bureau has been plagued with a long history, very long-standing history of issues, namely looking from the standpoint of dealing with complaints ineffectively or untimely, a significant backlog of applications, failure to provide adequate enforcement actions, and poor customer service. These are issues that have been long-standing which the bureau is now faced with, attempting to put together some action plans to resolve.

By way of introducing myself, I would like to share with you something about my background. I will keep it brief, because I know you have seen my resume.

I actually have approximately 30-plus years in the health care industry, working as a registered nurse and also as a senior management team member. The last 18 years of my work experience has been totally dedicated to working as a senior management participant, either as a vice president or a regional director in the private industry.

I have been asked by many individuals since I

1 assumed responsibilities for the bureau, did I know what I was
2 getting myself into, and why in Heaven's name would I want to
3 work for the bureau in view of its past history.
4 And my answer, quite simply, is that I'm a person
5 that thrives on perfection. I thrive for challenges, and I have
6 a long history and track record of being able to turn around
7 problem operations, which I have done in many of the
8 organizations that I have previously worked for.
9 Currently I am in the process of working with our
10 management team and the bureau in general, and trying to put
11 together a plan of action to address many of the issues that I
12 have previously stated.
13 During the first 60 days of my employment in the
14 bureau, I did an extensive assessment of our bureau operations
15 in general, which involved my actually interviewing all of the
16 staff members within the bureau, talking with members of the
17 advisory committee to the bureau, and trying to get input from
18 the industry in general as to what their perceptions were of the
19 bureau.
20 Quite frankly, I was told by industry that the
21 bureau had not a very good reputation; credibility was
22 questionable, and there were just a lot of issues that needed to
23 be taken care of.
24 In the almost seven months that I have been in
25 the bureau, I have reconvened the advisory committee, which had
26 not met for approximately three to four years prior to my coming
27 on board. We to this date have actually had two committee
28 meetings.

1 We have also drafted for the first time an
2 official draft document of a complaint handling procedure
3 regulation, which is actually mandated in the bureau's laws and
4 has never actually been implemented. It was posted on the
5 bureau's web site for public comments, and we are in the process
6 of finalizing that particular document.
7 Getting to the issue of backlogs, the bureau does
8 have a backlog. I think you've been presented documents on that
9 as far as our pending applications at this point in time. And
10 we are making some strides in actually reducing the backlog, but
11 have a lot more work to do in that area.
12 I've decided that it would be in the best
13 interests of the bureau, given our constraints on our budget, as
14 well as staffing resources, that in order for us to be
15 successful in digging our way out of the backlog, we needed to
16 come up with a targeted approach and decide what our priorities
17 would be for the various types of applications that we receive
18 within the bureau. So, we have had some successes from that
19 standpoint.
20 So, ultimately my goal and my desire for working
21 in this position as Bureau Chief is to make the operations of
22 the bureau those that are truly successful in my opinion.
23 Based on my background, I many years ago sat in
24 the same place as many of the students that the bureau serves to
25 protect. I actually went to a four-year nursing program.
26 Discovered at the end of my graduation, and having successfully
27 passed the nursing exam, that the university that I attended was
28 unaccredited.

1 Being a young, naive student, coming from a
2 low-income background, being the first of a generation to
3 actually go to college, you can imagine the disappointment that
4 I felt at that time.
5 Needless to say, I had student loans, as does
6 most of the students in our environment today.
7 And it really concerns me on a personal and
8 professional level to know that there are actually players out
9 there in the industry that mislead students. Students end up
10 with 60-80,000 dollars' worth of debt, and they potentially
11 could end up making minimum wage, or certainly not the wages
12 that they were actually promised.
13 So the question that has been posed to me as I
14 have met with some of you individually or with staffers is,
15 simply put, there have been many people, speaking namely of my
16 predecessors, that have sat before you, or people that were in
17 your position previously, and the bureau is not much better off
18 at this time, and potentially worse off than it was several
19 years ago.
20 So what is it that I will do differently from my
21 predecessors? My answer basically is, I'm not in a position to
22 judge what was done by my predecessors because I don't know
23 them. Granted, I've been told things about what they did or did
24 not do, but I don't feel that that adds any value in convincing
25 you today as to what I plan to do differently.
26 I'm not sure if what I am planning to do is
27 different from what any individuals attempted to do before, but
28 I do have a genuine passion and commitment to make sure that the

bureau is a regulatory organization that meets its obligations to protects consumers and provides the balance between the good actors, as far as our institutions, and to make sure that we weed out those that are not providing the services that they should to students and consumers in the State of California.

With that, I will open it up for questions.

CHAIRMAN PERATA: Since the bureau is, by all accounts including yourself, your own, this is a disaster.

In seven months have you been able to determine, do you have the wherewithal within the office to do what needs to be done?

I would say considering what's at risk here, and the scope of your responsibility, and your own personal experience, you know, a loping pace is probably not acceptable to you or anybody else.

So, do you have the wherewithal?

MS. WARD: You mean wherewithal, do you mean resources?

CHAIRMAN PERATA: Yes.

MS. WARD: Okay.

I would say that the bureau really needs to have additional staffing resources, especially at the program level. And when I refer to program, I'm talking about the educational specialists that are either in the Degree Unit or the Non-degree Unit. And they are actually charged with going through the applications, doing the quantitative review of the applications, doing the qualitative review, and then going out and conducting site visits.

1 These are also the same individuals that, if we
2 have a problem institution, and we identify that either through
3 information that we receive from the accreditation agency or
4 from student complaints, it's those same core of people that
5 would have to go out and conduct those investigations. We don't
6 have any other officers or investigators from that standpoint.
7 So, if we were to investigate, let's say, a
8 significantly size degree institution, and we only have four
9 education specialists, you pretty much have to take all of those
10 people out, especially if you're going to do an unannounced site
11 visit, to go out and collect all of the records that you would
12 need to conduct a further analysis.
13 CHAIRMAN PERATA: You're funded basically fee
14 funded?
15 MS. WARD: Yes.
16 CHAIRMAN PERATA: And do you have an accounts
17 receivable?
18 MS. WARD: Yes.
19 CHAIRMAN PERATA: Sizeable?
20 MS. WARD: No. Actually, if you look at some of
21 the reports, and I'm assuming that you all receive those reports
22 and that you had time to review them, but the bureau's revenue
23 has been decreasing, which is one of the issues that I was faced
24 with when I came on board.
25 It's probably several issues that have
26 contributed to that. One of the issues has been the formula
27 that has been used to calculate the anticipated revenue year
28 going forward. And there were instances that, in some years,

1 the bureau brought in more revenue. But that could have been
2 generated by a perk, a spike in the actual revenues, because
3 they increased their efforts to collect delinquent fees.
4 But based on the belief that those fees came in
5 that year, then maybe it was determined that the next year, we
6 would receive a ten percent increase in revenue, or a fifteen
7 percent the next year, and that type of thing.
8 The bureau has not been doing an adequate job in
9 collecting its fees. That's one of the things that we have
10 been working with since I came on board, to go after all of the
11 institutions that have failed to pay their fees. And there were
12 some schools that have not paid fees for several years.
13 We have also had some practices where individuals
14 have negotiated with institutions, where maybe an institution
15 says, "Well, I really can't afford to pay these fees. Can you
16 sort of establish a payment plan?"
17 So, what I'm working with the bureau at this
18 point in time is to get all of the staff to understand that we
19 really run an operation, and we have to function as a business.
20 And that, you know, if an institution does not have the funds to
21 pay to be regulated, then maybe that's a red flag for us that
22 they should not be in the business --
23 CHAIRMAN PERATA: I would think, yes.
24 MS. WARD: -- of providing services to schools.
25 CHAIRMAN PERATA: I don't know much, but I know
26 that much.
27 MS. WARD: So, at this point, what I have been
28 faced with is to come up with an expense reduction plan because

the bureau's expenses are exceeding the incoming revenue. And a portion of the expense reduction plan has been devoted to eliminating all of our seasonal temp help and retired annuitants.

CHAIRMAN PERATA: We have seen increases on student fees everywhere.

Will you increase the fees charged to the institutions for what you do for them?

MS. WARD: Well, I think that's something to be considered going forward. There was an effort made prior to my coming on board to do a fee study, but based on looking back at the fee study, it was only done over a two-week period to try and look at workload assessments and those types of things. And so, I would like to wait and see what our operations monitor recommends as well would be indicated.

CHAIRMAN PERATA: What I would suggest, just off the top of my head, is that you determine what an adequate level of enforcement, or whatever your mission is, and then determine the cost of that, and then make your fee schedule accordingly.

There's absolutely no reason that I can see why a private institution should be subsidized by the State of California. If you can't hit the pitch, you shouldn't be in the league. That would be my advice. You can write it down or not.

MS. WARD: I have it right here.

CHAIRMAN PERATA: That's good.

Any other questions? Debra.

SENATOR BOWEN: Actually, I know you realize you're in a different position because I think Senator Perata's

assessment is pretty universally shared. This agency's been a disaster.

And I believe that the last appointees have also sat and said we can make things better.

I'm not sure whether it's possible, given the numbers that I see of institutions that you monitor: 1234 private postsecondary and vocational training schools; 300 private degree granting institutions; 764 private institutions; and 950 different veterans programs.

How on earth do you do that with four examiners?

MS. WARD: Well, when I referenced four examiners, that was only looking at the Degree Unit.

For the main portion of the bureau, we actually have staff that supports Degree and Non-degree Unit, and our total staffing at this point is 60.5 employees.

The Title 38 Program, which is the federally funded contract program, we receive funds for managing that contract, and then they have their own separate dedicated staff.

SENATOR BOWEN: Let me ask you about a few specific things.

I know that much of the history here predates your appointment.

MS. WARD: Yes.

SENATOR BOWEN: But you were cited in the materials, the written materials that were provided to us in preparation for this an example of a student who paid $12,000 in

1 tuition to enroll in a Microsoft certification program by a
2 school rated "America's Number One Rated Computer Training
3 Company." The student received a lap top computer and a CD Rom,
4 but no classroom instruction.
5 The most significant thing, I think, for our
6 purposes is that after three years, the student still hasn't
7 received a refund of the $12,000 paid.
8 How do we, how do you, I guess is the question,
9 how do you change that?
10 MS. WARD: Well, I think the first thing that
11 needs to be done is that you have to go back and review all the
12 facts.
13 From my understanding, I was posed that same
14 question, and this was based on information that was printed in
15 a newspaper article. I did go back and research our data base
16 to see if we ever actually received a claim from the student.
17 And from our records, the student never filed the claim, even
18 though we sent him the paperwork.
19 In order for a student to receive reimbursement
20 from the Student Tuition Recovery Fund, we actually have to have
21 a claim form.
22 And I do know that this particular case was
23 litigated as well, and many of the students were represented by
24 attorneys, from my understanding.
25 So, you know, unfortunately, I can't give you a
26 lot of information about what happened because it happened
27 before I arrived at the bureau. And from talking to staff, they
28 indicated that there was a lot of misinformation that was

1 printed in the article.
2 So, that's really as much as I can tell you on
3 that front.
4 From my perspective, if we were to have that
5 situation today, and certainly if a student complained that they
6 did not receive payment, then we would contact the student and
7 make sure that they receive the claim form, and follow-up with
8 them to see if there was an issue with them getting the claim
9 form to us.
10 SENATOR BOWEN: The fees for this agency are
11 based, I assume, on a fee schedule that doesn't distinguish
12 between the operating history or number of complaints?
13 MS. WARD: Correct.
14 SENATOR BOWEN: Are there any fines, penalties,
15 financial disincentives to engaging in shark business practices,
16 over-promising, getting students into a program where they can't
17 possibly succeed?
18 My concern here is that the good actors are
19 basically bearing the cost, the financial cost, of enforcement
20 actions against the less than scrupulous members of this
21 industry.
22 MS. WARD: Well, the bureau actually has
23 authority to enforce certain administrative actions. And part
24 of that ties in with the application process. So, when you get
25 an application, and even if you issue a temporary approval, once
26 you do full approval and the site visit, you can always deny
27 that application, which means that they are not approved to
28 operate in the State of California.

1 SENATOR BOWEN: No, what I'm asking about with
2 this question is whether, when you have a school or an
3 institution that has a history of complaints and refunds, are
4 they asked to bear any of the costs of the enforcement actions
5 against them?
6 MS. WARD: If we conduct an investigation, if we
7 did sting operations and those type things, yes, they are by our
8 law required to pay for the investigative costs.
9 SENATOR BOWEN: And are you actually able to
10 collect those costs?
11 MS. WARD: Well, we attempt to. In some
12 instances we're not able to.
13 We work with the Attorney General's Office in
14 representing the bureau. And since I've been on board, we
15 actually collected on a $20,000 stipulated agreement, which was
16 the first in the history of the bureau, from my understanding.
17 So, in some instances, yes, we're successful. In
18 others, if the schools end up closing up, which sometimes they
19 do, and we do have a fair number of school closures. In fact
20 since July of '04, we've had 134 school closures. And some of
21 those were voluntary, but then some of those are because of the
22 actions that the bureau has taken.
23 SENATOR BOWEN: Let's go to the question of the
24 temporary license.
25 I'm told that it's fairly typical that the bureau
26 doesn't get out for an inspection before the 360-day clock
27 expires. And so that at least at one point, we had 60 instances
28 of the bureau illegally extending the licenses of schools and

1 allowing them to continue to operate, despite the fact that they
2 had no extensions. And that in some cases, we had schools that
3 operated for more than three years on a temporary license.
4 How are you going to change that?
5 MS. WARD: Well, the first thing that we are
6 trying to do right now is to dig out of the backlog. And as I
7 indicated earlier, we have mapped out a plan.
8 In the first 60 days that I came on board, we had
9 50-some odd -- I don't remember the exact number -- in our
10 Non-degree Unit that we had identified that were outside that
11 window and had exceeded the 360 days.
12 So, we mapped out a plan to utilize our resources
13 over the course of the next 90 days to get out to those schools
14 and conduct the site visits. And those were indeed done.
15 Since that time we've identified a number of
16 additional extensions of temporary approvals, and we have a plan
17 for the Non-degree Unit as well as the Degree Unit.
18 The Degree Unit is able to do fewer site visits
19 just because of the intensity of the type of review that is
20 actually required, because they have to empanel experts in the
21 curriculum fields, and that's somewhat of a lengthy process to
22 get that done, to go out on site. So, they have mapped out a
23 plan for the oldest of those particular expired temporary
24 approvals to get, I think, a total of 16, to get those completed
25 by the end of 2005. And then they have a plan that they will
26 phase in throughout next year to get those done.
27 We are also adding an additional staff member, or
28 filling a position that's been on hold for the Degree Unit.

1 That will help with that.

2 Then on the Non-Degree Unit side, they actually

3 have a very similar plan, and they've been targeting, trying to

4 get caught up on change of ownerships as well as their

5 re-approvals, which 200-and-some of those were -- came through

6 into the bureau prior to January of 2005.

7 So, because we do have a backlog, and the backlog

8 has existed, basically you have to prioritize based on the

9 resources that you have, looking at the oldest of those.

10 Even though we have approvals that extend -- if

11 we get complaints shared with us either from the accreditation

12 agency or we see a trend, then we manage to get someone out to

13 look at those facilities.

14 So, basically it's that you have to develop a

15 plan, set your priorities. We do have limited resources at this

16 point in time, and get through as many of those as you can. But

17 at least we do have a plan.

18 We will be tracking our progress on a monthly

19 basis so that we know whether or not we, you know, got all of

20 the actual site visits in any one month that we set, that we

21 were. And if we didn't, what the problem was.

22 SENATOR BOWEN: Let me ask you about the

23 requirement that schools show that at least 60 percent of their

24 students complete their training, and 70 percent get jobs in

25 their field.

26 It's my understanding that schools are required

27 to report this information to the bureau every year. However,

28 the bureau never reviews or verifies this information unless

there's a complaint.

Do you think that's sufficient? My suspicion is that there are a lot of schools who report that by probably stretching some of the definitions of "jobs in the field."

MS. WARD: Right.

SENATOR BOWEN: What do you think the standards should be? How should the bureau be looking at that?

MS. WARD: Well, I think I'd like to clarify one thing, that the bureau never looks at the annual reports.

There was a backlog with the annual reports for several years, and staff -- and they didn't have staff to do the filing and to make the documents accessible. They embarked on an imaging project last year so that they -- staff would be able to look at those, the annual reports.

Any time that our ed. specialists receive a request from a school, let's say they've already been approved, in a degree program they've been approved for five years, but they want to add five degree programs.

At that particular time, when they get any type of request, they will go back and pull the annual report.

SENATOR BOWEN: The question is not whether the report's there. The question is whether anybody ever verifies whether the information that's been reported is accurate; whether there's any kind of audit function?

In the Fair Political Practices Commission, we have random audits of a certain number of filings, and that helps.

MS. WARD: Right.

Well, there has not been a concentrated effort to verify that data.

If the bureau has received complaints, then the best way to verify -- because all of this is self-reporting -- is to actually go out, pull the reports, student files for a certain period of time, and then also to contact students, which we do via phone survey to confirm whether or not they were indeed placed.

We do find that we get reports that students were placed, and we'll talk to the student. We will even contact the employer where the school's records state that this was the employer that hired this individual. And the schools will tell us, this person worked for them in the capacity of an internship prior to their graduation. So, that is definitely an issue.

I met over the course of the past three weeks with representatives from two different accreditation agencies, and that is an issue that we're all struggling with, was trying to figure out how best to validate that information.

What I would like to see the bureau do is to be able to get more resources so that we can go out and do additional unannounced visits, which means in between that window, whether or not you've received complaints or not. And we are authorized to do that in our laws, but that has not been done on a routine basis. I think that's when you actually can determine, going in and looking at records, contacting students, when there really is not a smoking gun to say that the stats are valid or not.

SENATOR BOWEN: My final question has to do with

1 the growth in programs that are offered electronically and based
2 outside of California.
3 Does the bureau have any ability to provide
4 assistance or evaluate complaints from students who enroll in a
5 program where the headquarters is not in the State of
6 California?
7 MS. WARD: Well, if they're outside, if their
8 headquarters is outside of the State of California, but they
9 have California residents that are here in the State of
10 California, if we receive complaints, we will investigate those.
11 That's an area that the bureau really has not
12 done much in. And I am hoping -- this month I'm actually going
13 to Oklahoma to meet with state representatives from all the
14 other states that have regulatory agencies to see exactly what
15 they're doing, because this is a nation-wide issue.
16 But at this point, no, the bureau has not done
17 very much in that area.
18 SENATOR BOWEN: Let me just also reinforce
19 Senator Perata's advice, that you take a look at what the work
20 is that needs to get done and determine who needs to do it. And
21 just add to it that it may be that we need to go to a structure
22 where you're not collecting the funding for enforcement
23 operations equally from schools and institutions that have a
24 long history of zero complaints, and schools and institutions
25 that have a very troubled track record.
26 You may need legislative authority to change
27 that, but one of the concerns in raising the fee structure,
28 obviously, is that you, to the extent that it's based on

1 something like size of institution or whatever --
2 MS. WARD: Based on amount of revenue at this
3 time.
4 SENATOR BOWEN: Amount of revenue. We're really
5 going to fund a lot of operations for those who have a great
6 history, instead of those who are causing the trouble.
7 MS. WARD: Okay.
8 SENATOR BOWEN: Thank you.
9 CHAIRMAN PERATA: Any questions, comments?
10 SENATOR ASHBURN: I'll move the confirmation.
11 CHAIRMAN PERATA: Do you have family here?
12 MS. WARD: Yes, I do.
13 CHAIRMAN PERATA: Would you like to introduce
14 them?
15 MS. WARD: Sure. Let's see. I have my daughter
16 here, Joy. I have my very best friends, the couple on the far
17 right, long-term friends. Attorney Joe Cooper. And I have a
18 colleague and faculty member from the University of Phoenix, and
19 employees from my prior employer. And we also have --
20 CHAIRMAN PERATA: Just to make sure you don't go
21 back?
22 [Laughter.]
23 MS. WARD: They'd like for me to come back, I
24 think.
25 We also have Robert Johnson, who is the CEO for
26 the CATS organization, association.
27 And my fiance -- my God, if I forget him -- Bill
28 Coleman.

[Laughter.]

CHAIRMAN PERATA: Good catch.

[Laughter.]

CHAIRMAN PERATA: Anyone here in support, other than the family members?

MR. ELLISON: Thank you, Mr. Chair and Members. Brooks Ellison here in support on behalf of my clients, Coleman College, Life Chiropractic College West, Cleveland Chiropractic College, Kaplan, and Boston-Reed.

We think she's doing a great job. We have seen definite improvement. It is an extremely difficult job. The history of this goes back years. We used to refer to it around here as the "Wars." There's been truces.

But for the first time in a long time, we've seen definite improvement. My clients have told me that. Very professional, very responsive, very organized, and things seem to be getting done a lot quicker in a much more organized way.

We really support the confirmation.

CHAIRMAN PERATA: Thank you.

Anyone further? Seeing none, we have a motion to recommend confirmation. Please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to Zero.

CHAIRMAN PERATA: Congratulations.

MS. WARD: Thank you.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 3:06 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of July, 2005.

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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JUL 0 6 2005

WILLIAM L. GAUSEWITZ
Director

TO: The Honorable Members of the Senate Rules Committee
FROM: Linda C. Brown, Deputy Director
RE: Statement of Goals
DATE: July 1, 2005

Thank you for considering confirmation of my appointment as Deputy Director of the Office of Administrative Law (OAL). If confirmed, the goals I will pursue during my term as Deputy Director are to:

- **Amplify compliance with the Administrative Procedure Act (APA):** OAL's primary responsibility is to improve the quality of state regulations by approving only those that are authorized by law, written in a comprehensible manner, and supported by an adequate record. The APA is also intended to ensure that Californians have input into government rulemaking by requiring notice and an opportunity to comment. One of my goals as Deputy Director is to enhance the level of adherence to the APA by working to establish a method for OAL to check for patterns of systematic non-compliance to APA requirements.

- **Assure the uninterrupted publication of the Official California Code of Regulations:** State law requires OAL to provide for the official compilation and publication of state regulations in the California Code of Regulations (CCR), and to make the CCR available to the public on the internet for free. The current publication contract, which includes production of the online version, expires at the end of 2005. One of my key responsibilities this year is to conduct a competitive bidding process for the future publication of the CCR. I have established an Advisory Committee to provide oversight and guidance as OAL goes through this process. My goal is to execute a publication contract that brings revenues to the state of California while ensuring full, free internet access to the CCR.

- **Enhance stability and professionalism at OAL:** OAL suffered drastic staff reductions in previous years. The remaining staff worked diligently to maintain integrity and professionalism, and OAL Director Gill Gausewitz has taken significant steps to re-energize the office. Nevertheless, cuts have taken a toll on OAL's ability to fully perform its mission. I will work to ensure that OAL not only preserves the rule of law by requiring regulations to be adopted within the parameters set by the Legislature, but that we capture the spirit of the Administrative Procedure Act by actively protecting the public from illegal rules and fostering increased awareness of the rulemaking process.

- **Update OAL's policies and procedures:** From 1998 to 2004, OAL did not have a director who had been confirmed by the Senate. As a result of the lack of steady leadership, OAL has outdated internal processes and manuals which do not meet all current operational requirements imposed by the Department of General Services and the Department of Finance. In our role as APA compliance officers, it is inappropriate for OAL to be less than sterling in adhering to such requirements. My goal is to bring OAL back into full compliance with all state operational requirements.

Thank you for providing me with this opportunity to describe my goals. I sincerely appreciate your consideration of my appointment.

SENATE RULES COMMITTEE QUESTIONS

1. Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as Chief of the Bureau for Private Postsecondary and Vocational Education?

ANSWER:

During my tenure, I hope to restructure Bureau operations to ensure that the scope of the Bureau's regulatory responsibilities are fully implemented in an efficient manner. My major areas of focus will include: (1) Pursue revisions to the Reform Act to streamline current processes and eliminate ambiguities that result in confusion for all parties; (2) Implement a more effective enforcement model; (3) Streamline existing approval and reporting processes; (4) Eliminate application backlogs; and (5) Implement recommendations of Operations Monitor.

2. The BPPVE has been the subject of several audits in recent years that have identified problems with the manner in which the Bureau conducts business. Problems identified include long delays in issuing licenses and renewals and responding to complaints, inconsistent internal policies and procedures, and a lack of performance goals and timetables. What progress have you made in addressing these and other issues raised in the audits?

ANSWER:

Due to the fact that the Bureau has previously provided responses to other issues identified via the audit process, I will confine my response to the problems stated. Historically, the Bureau inherited a significant backlog when the Legislature decided to dissolve the Council and transfer it's responsibilities to the Bureau. During this transition period, there was minimal work done in terms of key responsibilities of the Council such as licensing, approval of new applications or renewal applications. Therefore, due to inadequate staffing and other factors, many of these issues became worse over time. In approximately six months in my appointed position, I have made the following efforts to address these issues:

- Delays in Processing Applications - During my first 60 days in the Bureau, managers were required to submit a plan for completing site visits on all temporary approvals that had extended beyond 365 days. All site visits have been completed. A review of non-degree and degree applications revealed a fairly significant backlog with outstanding applications, some dating back to 1998. A plan was developed and implemented to eliminate the backlog associated with extensions of temporary approvals.

JUN 30 2005

SENATE RULES COMMITTEE QUESTIONS

- Complaint Handling – A draft Complaint Handling Procedure Regulation package has been completed and was reviewed by the public and Advisory Committee in January. Many revisions have been made to the initial draft based upon feedback received and from research conducted with other states. The final draft will be routed through the appropriate approval process and we anticipate full implementation later this year. In an effort to make the complaint handling process more timely and efficient, the Bureau will be conducting a 6 month "pilot" with DCA's Complaint Mediation unit.

- Inconsistent Internal Policies and Procedures - The Bureau has revisited issues where interpretation of the law varies with program staff by identifying these areas and seeking legal advice. All staff have been advised as to the appropriate interpretation and the expectation for all staff to comply. Staff were also surveyed to identify the areas of greatest concern from a policy perspective. Training sessions are being organized to include staff presentations from the AG's office, Legal Counsel and DCA's Internal Audits.

- Lack of Performance Goals and Timetables - A review of the history of ongoing performance evaluations of Bureau employees reflected that most staff had not received an appraisal for several years. All managers were required to submit a schedule to ensure that all staff would be evaluated during 2005. The Bureau is also in the process of a reorganization that includes a review of all existing duty statements and classifications of staff. We have been advised by Human Resources that we cannot develop performance measurements per union contracts, however, we can develop and implement workload expectations. Members of our management team are diligently working on enhancing our ability to hold staff accountable and to better monitor performance outcomes.

3. What internal organizational changes, if any, have you implemented since you have been Bureau Chief and what have been the results of these changes? SB 1544 (Figueroa), Chapter 740, Statutes of 2004, required the Director of Consumer Affairs to appoint an administrative monitor for the BPPVE to assess the effectiveness of the Bureau's administrative and enforcement operations, and whether or not they are in compliance with state statute. The monitor will report its findings to the Legislature in a report due October 2005. What issues would you identify as needing reform in order to make improvements to the overall effectiveness and efficiency of the Bureau's administrative and enforcement operations?

SENATE RULES COMMITTEE QUESTIONS

ANSWER:

During my first six months on the job, much of my time has been devoted to building a team environment and conducting a Bureau assessment to identify operational issues that warrant organizational changes. I also have initiated a Bureau reorganization to accommodate a more effective enforcement model. I anticipate full implementation during the month of July. The following areas need reform: modifications to existing Bureau regulations; adoption of a formal complaint handling process; effective use of staffing resources and improved application review and approval processes; and revised and simplified fee schedule statutes. The Bureau has allocated resources to begin the review and revision process of existing regulations.

4. What clarifications or changes are needed, if any, in state statute to help you manage the regulatory duties of the Bureau?

ANSWER:

The following are changes that are needed: (1) Simplification of fees; (2) Simplification of school approval process; (3) Greater emphasis on monitoring schools for compliance with educational standards as opposed to front end review emphasis, as current laws require; and (4) Raising existing caps on STRF accounts.

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